ARBITER FOR FINANCIAL SERVICES

ANNUAL REPORT 2018

Enquiries relating to this Report are to be addressed to:

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Board of Management and Administration
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Wherever used herein, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.

Any use of words or phrases to similar effect shall have no significance in the interpretation of this Report, such use being solely for the sake of convenience.

ARBITRU GHAS-SERVIZZI FINANZJARJI
ARBITER FOR FINANCIAL SERVICES

21 June 2019

Prof Edward Scicluna B.A. (Hons) Econ, M.A. (Toronto),
Ph.D (Toronto), D.S.S (Oxon) MP
Minister for Finance
30, Maison Demandols
South Street
Valletta VLT 1102

Dear Minister

Submission Letter

In terms of article 20 of the Arbiter for Financial Services Act (Cap. 555), I have the honour to transmit to you the Annual Report and Financial Statements of the Office of the Arbiter for Financial Services for the year 2018.

Yours faithfully

Dr Reno Borg
Arbiter for Financial Services

The Office of the Arbiter for Financial Services in Malta:

Providing an independent and impartial mechanism of resolving disputes outside of the courts' system, filed by customers against financial services providers authorised by the Maltese financial services regulator.

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Acronyms / Abbreviations

Act	Arbiter for Financial Services Act
ADR	Alternative Dispute Resolution
ASF	*Arbitru għas-Servizzi Finanzjarji (Arbiter for Financial Services)*
CRO	Customer Relations Officer
EEA	European Economic Area
EU	European Union
MFSA	Malta Financial Services Authority
MIFID	Markets in Financial Instruments Directive
OAFS or the Office	Office of the Arbiter for Financial Services

Legislative instruments

Arbiter for Financial Services Act

Act XVI of 2016, the Arbiter for Financial Services Act (Chapter 555), came into force on 18 April 2016. The Act sets out the administrative, operational and jurisdictional framework of the Office. It also lays down the functions and accountability requirements of the Office. The Act provides the necessary legal framework for the appointment, functions, powers and competence of the Arbiter. It also provides for the appointment of a Substitute Arbiter, where this is necessary.

In 2018, amendments were made to the Act to rectify minor anomalies in the Maltese version of the Act, as well as to correct a mistake in the cross-referencing of an article in both versions of the Act. The Act was also amended to bring the pensionable conditions of the Arbiter in line with those applicable to Judges of the Courts of Malta. These amendments were published by means of Act No. VII of 2018.

Designated financial Alternative Dispute Resolution entity

By virtue of Legal Notice 137 of 2017 (Arbiter for Financial Services (Designation of ADR Entity) Regulations, 2017), the Minister for Finance, as the competent authority for the purposes of the ADR Directive, appointed the Office of the Arbiter for Financial Services as the ADR entity for financial services in Malta.

As a result, and in regard to alternative dispute resolution bodies in relation to financial services complaints, Malta is fully compliant with the requirements of the said Directive 2013/11/EU, and has joined several other certified ADR bodies in the EU and EEA with similar competences in financial services complaints.

Report of the Arbiter for Financial Services

Dr Reno Borg BA (Hons.), MA, LL.D., ACI Arb.

The Arbiter is required by law to ensure that, on a yearly basis, his Office prepares an annual report which will be laid on the Table of the House of Representatives and shall also be made accessible to the public. This legal requirement adds to the transparency of the Office of the Arbiter for Financial Services (OAFS) because its operations can be examined and scrutinised at the highest level.

As time has gone by we have acquired more experience and the numbers show that customers are utilising our services to a greater extent. During 2018 the number of enquiries and minor cases has risen to 1016; since our inception, the total number of customers making use of this particular service has reached 2057.

We have also seen an increase in formal complaints and the number of cases decided by the Arbiter has moved up from 64 in 2017 to 139 in 2018.

While the number of cases closed in 2017 was 114, in 2018 the number rose to 227.

However, figures alone do not reveal the real picture. In 2018, we have substantially reduced the backlog due to more decisions given by the Arbiter and a small increase in the number of cases solved through mediation or during the investigation stage where the Arbiter still encourages the parties to bridge their differences and reach an agreement.

Mediation is the backbone of any Alternative Dispute Resolution (ADR) scheme because the parties are free to reach a compromise on agreed terms which satisfy both parties to the dispute. Mediation is faster and less laborious; it guarantees a continued relationship between the client and the service provider. Although we have seen an improvement in this area, we are still of the opinion that we need to work harder to spread the mediation culture. When mediation fails, it is either because complainants are inflexible and not prepared to reach an amicable settlement unless they get their whole pound of flesh; or because service providers believe that a voluntary agreement with one client might trigger more complaints. However, this fear is unfounded because

the decisions of the Arbiter are available on the OAFS website and are therefore in the public domain. In order to afford complainants anonymity, the complainants' identity is pseudonymised.

Service providers have shown more willingness to solve minor cases but were generally reluctant to conclude amicable agreements in formal cases.

Oral hearings offer a great challenge especially when complainants residing abroad are involved. Although we make use of the best technology possible, sometimes it is very hard to communicate and understand exactly what is being said. The practice adopted by the Arbiter so far has been to organise these hearings through video or telephone conference but the challenge of communicating through these channels will remain.

Complaints could vary from the simple loss of a credit card to a very complicated investment case. The priority of the Arbiter is to expedite procedures, but this is not always easy because there could be cases where the complainant is unavailable for a substantial period of time through illness or other personal circumstances; or because the parties themselves ask the Arbiter for a lengthier period of time to prepare their final submissions.

The Arbiter has to balance expediency with the undeniable and fundamental right to a fair hearing of both parties. However, relatively speaking, the process has gathered pace. All the cases filed with the OAFS in 2016 have been concluded and all the cases introduced in 2017 have likewise been closed. The Arbiter has also decided a number of cases filed in 2018.

The OAFS has also fully participated in meetings organised by FIN-NET, the network of cross-border financial disputes between consumers and financial services providers in the EU and EEA.

The Office was accepted as a full member of the International Network of Financial Services Ombudsman Schemes (INFO Network). The network is the worldwide association for financial services ombudsmen and other out-of-court dispute resolution schemes that resolve complaints brought by consumers (and, in some cases, small businesses) against banks, insurers and/or other financial services providers. We participated in the Network's Annual Conference held in Dublin.

We plan to continue participating in these international fora and share our experience with the international community of financial services ombudsmen/arbiters.

In order to make progress and achieve its objectives, any organisation has to be continuously conscious of its objectives and must have a strategic plan to follow. For the years to come, we should focus on our duty to deliver better, and satisfy as much as possible the aspirations of all stakeholders involved in the shortest time possible.

As forecast in our two previous Annual Reports, we have now reached a stage where the back log of 'historical' cases has nearly been dealt with and we keep firm our commitment to deliver decisions in shorter time spans. This is a realisable goal because experience and added knowledge facilitate the conclusion of cases. I am also confident that I can rely on the competence and dedication of our staff who leave no stone unturned to ensure that our clients are given the best service possible.

By way of conclusion I feel duty bound to thank all the stakeholders involved for their understanding and cooperation. Our staff members have lived up to expectations and I assure them that their contribution is much appreciated. My final thanks go to the Chairman and Members of the Board of Management and Administration for their unfailing support.

The Ministry of Finance has provided all the financial and logistical support requested in real time; without it we could not have commenced our long journey of resolving disputes in the financial services sector in a professional and just manner.

Statement from the Chairman of the Board of Management and Administration

Geoffrey Bezzina

This report from the Office of the Arbiter for Financial Services covers the second full year of operations since its establishment on 18 April 2016, with operations commencing in the subsequent month.

The Office is an independent setup that is statutorily empowered to mediate, investigate and adjudicate complaints filed by customers against financial services providers licensed or otherwise authorised in Malta.

It is positive to observe the increased number of enquiries from the general public, both locally and overseas, that have been processed during the year. This signals that the awareness of the Office continued to increase during the year and more customers are seeking our assistance in dealing with the issues they encounter with their respective financial services provider.

The Office is complemented by a number of support staff whose role is indeed focused to assist customers with their enquiries related to the financial services sector. The support provided at such a stage involves the provision of information about our complaints' procedures and assistance in dealing with certain issues that arise between the customer and the financial services provider. For some cases, our support staff would need to engage with the financial services provider for clarification and intervention. Certain issues are indeed resolved through such an early intervention. We acknowledge the cooperation and understanding afforded by financial services providers of this informal mechanism at an early stage which aims to assist customers and provide clarity where and as needed.

A number of cases may not be able to be resolved informally; customers are therefore provided with information about our complaints process.

It may come as a surprise that, in the year under review, the amount of complaints we received from persons residing outside Malta exceeded those submitted from local customers. This is reflective of the nature of Malta's financial services sector which transcends national boundaries and operates across many EU jurisdictions. Our setup adequately caters for such complainants.

The nature of our work is cyclical and it is rather impossible to predict the number of future complaints that we may receive. Moreover, it may not be the actual numbers that matter but rather the complexity of many of the complaints that are submitted, which require substantial analysis and expertise to review and articulate. Many cases received in 2018 would fall under this category of complaints.

We have to date been prudent in the level of staffing levels and maintained our headcount to a small but highly dedicated and professional team. The recruitment of any further support and specialised staff will be considered as directed by the Arbiter and the developing exigencies of the Office.

Looking ahead, we plan to revamp our website and automate a number of processes relating to the manner by which enquiries and complaints are processed and registered. Our aim is to provide a streamlined service and a simplified process to our stakeholders through the enhanced use of technology.

Lastly, I am grateful for the support and wise counsel of the Board members. Their critical feedback to several projects that have been implemented in 2018, to build a sound administrative setup within the Office, has been most valuable. They and I would like to thank the Arbiter and all members of staff for their cooperation and dedication, and for sharing the Board's commitment towards shaping a relatively new office with a positive culture of good governance and administration.

The role and powers vested in the Arbiter for Financial Services

Powers and functions

The Arbiter for Financial Services acts independently and impartially of all parties concerned and is not subject to the direction or control of any other person or authority. The law gives him the authority to determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case. The Arbiter must deal with complaints in a procedurally fair, informal, economical and expeditious manner.

In the review of complaints, the Arbiter will consider and have due regard, in such manner and to such an extent as he deems appropriate, to applicable and relevant laws, rules and regulations, in particular those governing the conduct of a service provider, including guidelines issued by national and European Union supervisory authorities, good industry practice and reasonable and customers' legitimate expectations and this with reference to the time when it is alleged that the facts giving rise to the complaint occurred. The Arbiter's powers under the Act are wide and include the power to summon witnesses, to administer oaths and to issue interlocutory orders.

Dealing with complaints

The Arbiter cannot consider a complaint if the conduct complained of is or has been the subject of a lawsuit before a court or tribunal initiated by the same complainant on the same subject matter. Neither is he able to accept a complaint if it results that the complainant did not communicate the substance of the complaint to the financial service provider concerned and has not given the latter a reasonable opportunity to deal with the complaint prior to filing a case with the Arbiter. A complaint may also be refused if, in the Arbiter's opinion, it is frivolous or vexatious.

Temporal limits

The Arbiter has the competence to hear complaints in relation to the conduct of a financial services provider occurring after the coming into force of the Act as long as the complaint is registered in writing with the provider not later than two years from the day the complainant first had knowledge of the matters complained of. The Act stipulates that a conduct that is taking place over time shall be presumed to have occurred at the time when it stopped. A series of acts or omissions shall be presumed to have occurred when the last of those acts or omissions takes place.

Adjudication and awards

The Arbiter is empowered to mediate, adjudicate, and resolve disputes and, where appropriate, make awards up to €250,000, together with any additional sum for interest due and other costs, to each complainant for claims arising from the same conduct. The Arbiter may, if he considers that fair compensation requires payment of a larger amount than such award, recommend that the financial services provider pay the complainant the balance, but such recommendation shall not be binding on the service provider. The decisions of the Arbiter are binding on both parties subject only to appeal to the Court of Appeal (Inferior Jurisdiction).

Collective redress

The Arbiter may, if he thinks fit, treat individual complaints made with the Office together, provided that such complaints are intrinsically similar in nature.

The functions of the Board of Management and Administration

The Board of Management and Administration is appointed by the Minister for Finance for a renewable five-year tenure. Its functions include:

- provision of support in administrative matters to the Arbiter in the exercise of his functions;
- monitoring the efficiency and effectiveness of the Office and advising the Minister on any matter relevant to the operations of the Office;
- recommending and advising the Minister on rules regarding the payment of levies and charges to the Office by different categories of persons, the amounts of those levies and charges, the periods within which specified levies or charges are to be paid, and the penalties that are payable by a person who fails to settle on time or in full the amount due; and
- collecting and recovering the levies and charges due.

The Board, in consultation with the Arbiter, must also prepare a yearly strategic plan as well as a statement with estimates of income and expenditure for the forthcoming financial year. The Strategic Plan for 2019 was presented to Parliament and is available on the Office's website.

The Board cannot in any way interfere in the manner the Arbiter deals with complaints.

The Board convened seven times in 2018, for which all members attended.

Board of Management and Administration

Chairman

Geoffrey Bezzina, BA (Hons.) Banking & Finance, MA European Studies

Members

Peter Muscat, BA, ACIB (London)

Anna Mallia, LL.D., LLM (Lond.), Dip. Tax (MIT)

Secretary

Bernard Briffa

Staff complement

Apart from the Arbiter for Financial Services, the Office is composed of the Chairman, the secretary and registrar to the Arbiter; two customer relations officers (one of the officers is also the secretary of the Board); two case analysts; an officer in charge of mediation; an administrative assistant; a receptionist; a handyman and a messenger/driver.

Front Row (left to right): *Samantha Gatt, Rita Debono, Dr Reno Borg, Valerie Chatlani, Bernard Briffa, Geoffrey Bezzina*
Back Row (left to right): *Robert Higgans, Francis Grech, John Francis Attard, Paul Borg, Gaetano Azzopardi, Ruth Spiteri*

International engagement

FIN-NET, the financial dispute resolution network of the EU

The Office is an active member of FIN-NET, the network of cross-border financial disputes between consumers and financial services providers in the EU and EEA. FIN-NET owes its existence to European Commission Recommendation 98/257/EC, of 30 March 1998, on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes. It was set up by the European Commission in 2001 to promote cooperation among national consumer redress schemes in financial services and provide consumers with easy access to alternative dispute resolution procedures in cross-border disputes concerning the provision of financial services. FIN-NET has 60 members in 27 countries.

The Office of the Arbiter for Financial Services became a member of FIN-NET in 2017 as it qualifies and complies with the principles set out in the ADR Directive.

Any resident of an EU and EEA state wishing to complain about a foreign service provider that is domiciled within this area can approach the complaints settlement scheme in its home country. The home scheme will assist to identify the relevant complaints scheme in the service provider's country and indicate the next steps that it should follow. The consumer may choose to contact the foreign complaints scheme directly or else submit the complaint with its home country scheme, which will pass it on to the respective scheme accordingly.

The Commission has a dedicated website to promote FIN-NET among consumers and financial services providers[1].

For consumers, the website contains guidelines about the consumer redress bodies for financial services in every EU and EEA jurisdiction.

Similarly, a promotional campaign to promote FIN-NET, which includes a promotional video and a new logo, has been rolled out in every Member State through the websites of the respective redress schemes. The Commission's initiatives are part of a broader consumer strategy titled "Consumer Financial Services Action Plan: Better Products, More Choice".

The chairman of the Board is also a member of the Steering Group, chaired by the European Commission (DG FISMA), which prepares the agenda for FIN-NET's bi-annual plenary meetings.

The International Network of Financial Services Ombudsman Schemes (INFO Network)

The Office was accepted as a full member of the International Network of Financial Services Ombudsman Schemes (INFO Network). The network is the worldwide association for financial services ombudsmen and other out-of-court dispute resolution schemes that resolve complaints brought by consumers (and, in some cases, small businesses) against banks, insurers and/or other financial services providers.

Formalised in 2007, INFO Network facilitates cooperation among its members to build expertise in external dispute resolution by exchanging experiences and information in areas including structures, functions and governance models of financial redress schemes, handling of systemic issues, staff training and continuing education. Drawing from the wealth of information and diversity of practices adopted by the different financial redress scheme members, the INFO Network published a start-up guide for financial redress schemes which, other than broadening the aim of disseminating best practices in the field of financial consumer redress, is also aimed as a toolkit for jurisdictions which are in the process of creating such schemes.

The INFO Network organises an annual conference hosted by one of its members. The Arbiter and the Chair of the Board attended INFO's 2018 meeting which was held in Dublin, Ireland.

Further information about the network is available at this link: www.networkfso.org

[1] *https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net_en*

DETERMINING IF A COMPLAINT IS WITHIN THE OAFS MANDATE

Is the customer a natural person or a micro enterprise (employing less than 10 persons, and with an annual turnover/balance sheet not exceeding €2 million)?

NO → **The OAFS will not be able to review the complaint**

YES ↓

Is the customer, including its lawful successor:

a. a consumer of a financial services provider; or
b. to whom the financial services provider has offered to provide a financial service, or
c. who has sought the provision of a financial service from a provider?

NO → **The OAFS will not be able to review the complaint**

YES ↓

Is the complaint against a financial services provider who is, or has been, authorised or licensed by the MFSA?

NO → **The OAFS will not be able to review the complaint**

YES ↓

Has a complaint been registered in writing with the provider not later than two years from the day on which the complainant first had knowledge of the matters complained of?

NO → **The OAFS will not be able to review the complaint**

YES ↓

Has the provider sent a reply to the complainant's letter?

NO → The complainant is asked to wait for a reply from the provider, which should be sent within 15 working days from receipt of the complaint. The complainant may still proceed with lodging a complaint with the OAFS if the provider fails to submit a reply by this time.

YES ↓

YES → The complainant is asked to wait for a reply from the provider, which should be sent within 15 working days from receipt of the complaint. The complainant may still proceed with lodging a complaint with the OAFS if the provider fails to submit a reply by this time.

Does the complaint to the OAFS contain the following three elements: (a) financial services provider's full name; (b) reason for complaining and (c) the remedy that is being sought?

NO → The complainant is asked to amend the form to ensure compliance with the law and procedures of the OAFS.

YES ↓

YES → The complainant is asked to amend the form to ensure compliance with the law and procedures of the OAFS.

Complaint will be accepted

Processes and data analysis

Enquiries and minor cases

Our approach

Many customers contact the Office for the purpose of enquiring about its complaints' process. Although some customers seek the services of a professional person when lodging a complaint with the Office, there is a number of customers who choose to submit a complaint unassisted. In such cases, the Office's Customer Relations Officers (CROs) address all enquiries that are made by such customers and would normally direct them to visit the Office's website or alternatively send them a complaint form, together with a leaflet explaining the OAFS complaints' process in further detail.

Besides responding to customers' enquiries about the Office's processes, an informal yet effective service to customers who may require help or intervention on minor financial services issues is also offered. When an enquiry is made, the CROs ask questions to seek further information about the issues which gave rise to the customer's contact, as well as establish the level of complexity of the customer's claims.

At times, it may also be 'a minor case' which may require the Office's intervention. Depending on the situation at hand, the Office's CROs may suggest a possible remedy or a course of action. Such response would normally be based on similar experiences also brought to the Office's attention by other customers. The CROs may, but this also depends on the circumstances of the case and with the permission of the customer, contact the financial services provider to seek an initial and informal response or opinion which may then be relayed to the customer.

In some situations, the CROs may intervene to get a situation sorted out but at times, they may only be able to propose a course of action to the customer (such as seeking legal help). Some enquiries or minor cases could also lead to a complaint being lodged with the Office.

There have been several instances in which the CROs directed the customer to contact the provider again, offering basic information which the customer could consider when dealing with the provider. Further discussion can ensue with the customer and the provider, in the hope of a compromise. Sometimes, the Office's informal intervention can break an impasse which might have been reached between the customer and the provider. In many instances, the CROs might only be able to offer information for the customer to consider.

Analysis

2018 was a significant year in the brief history of the OAFS; it saw a steady increase in the general public's awareness of this Office as well as of the valid assistance and support it provides to overcome the impasse that may have developed between the complainant and the service provider.

This is reflected in the increase in the number of enquiries received by the Office over the 12-month period – from 851 in 2017 to 1,016 in 2018, an increase of 19%.

The initial intervention of the Office, after its receipt of an enquiry, led to the amicable and satisfactory resolution of several of these cases with the service provider concerned.

Nevertheless, there were naturally several other cases where the impasse was not resolved and these were escalated to become formal complaints for the Arbiter's subsequent deliberation and decision.

Banking enquiries accounted for as much as 42% (424) of the overall enquiries received by the Office, up from 31% (265) in 2017. The following operational aspects were uppermost in the enquirers' concern: poor service and transaction charges as well as credit cards and loans.

EU nationals resident in Malta increasingly called this Office concerning the opening of basic accounts by local banks. Some of those who contacted the Office seemed to think that the opening of a basic account was, to a degree, an "inalienable" right triggered by their EU nationality; some seemed unable to understand or appreciate the fact that any bank would initially require to carry out a proper due diligence exercise intended to elicit important background information enabling it to determine whether to accede to such request or not.

Coupled to the foregoing, there were several cases concerning enquiries made by a bank to its account holders about the origin of the funds already deposited (or still to be deposited) with it.

Similarly, there were equally a number of instances when a bank confidentially requested specific information, deemed by some to be of a personal nature, in order to better assess the profile of the client(s) who had already been on its books for a number of years.

Such enquiries formed an integral part of the aforementioned due diligence exercise implemented by the bank concerned.

In all the foregoing episodes, the stance adopted by this Office focussed on the fostering of cooperation between the persons concerned and their respective bank(s). It further encouraged communication between the parties intended to ensure that each side was aware of its interlocutor's views; this would consequently engender cooperation.

Insurance cases were a close second, with 40% (404) of the overall enquiries received, a six per cent fall compared to 2017 (46%, 396). The issues brought by customers to the Office's attention were mainly related to travel and home insurance as well as motor and life policies.

In the travel insurance sector, the issues submitted concerned mainly the failure by policyholders to lodge reports with the police (or the authorities concerned) in the visited country within 24 hours of having sustained a loss; as well as the coverage (or otherwise) of personal items (such as laptops) and the replacement of damaged luggage.

In the home insurance segment, the issues centred mainly on the compensation for damaged property installed in the open (for example, photovoltaic panels) as well as for the damage caused by the escape of water from neighbouring premises.

In the motor insurance scenario, the customers' utmost concern centred on the respective market value of accidented vehicles which were declared to be beyond economical repair by the insurers concerned.

Of equal concern was the delay that many motorists had to endure for the repair of their vehicle as a result of unavailability of spare parts as well as the loss of use entitlement while the accidented vehicle is inoperative until the required parts are delivered.

In addition to the foregoing, the Office was also faced with a number of motorists who were unable to source insurance cover for their vehicles; and this due to the declinature – usually stemming from a negative claims record – of the insurer concerned to renew their policy.

This supply problem tended to reiterate when the afflicted motorists enquired with alternative Insurers.

In the life assurance segment, the policyholders' major concern centred on the perceived considerable shortfall in the maturity value of with-profits policies when compared to what they had been allegedly led to believe at the outset when purchasing their policy.

Investment cases were a distant third, accounting for just 13% (137) of the overall enquiries, a decrease from 20% (171) in 2017. Issues ranged from bad advice allegations to the loss of invested capital as well as from alleged mis-selling to portfolio management.

Only five per cent of the enquiries received fell outside the jurisdiction of the Office.

The international dimension of financial services is also reflected in the type of enquiries that have been handled during the year. It is observed that there has been an increase in the number of calls and enquiries from foreign customers who had purchased a product or service within their territory or on-line from a financial services provider licensed by the Maltese financial services regulator.

In the majority of cases, the Office is initially approached over the phone; this accounts for 62% of such approaches.

However, e-mail enquiries are not uncommon, particularly from overseas – amounting to 27% in all.

This is complemented by a number of walk-ins – amounting to about 10% - where customers simply turn up unannounced at the Office in order to seek its views about their grievance(s).

Enquiries are handled by two Customer Relations Officers (CROs) forming part of the OAFS team. Using their expertise in the three sectors, and the supporting documentation elicited from the enquirer, they assess the merits of each enquiry before approaching the provider concerned in an attempt to identify a practical solution to the issue at hand; failing which, the CRO would then recommend the enquirer to lodge a formal complaint.

Figure 1 - Enquiries and minor cases (By type)

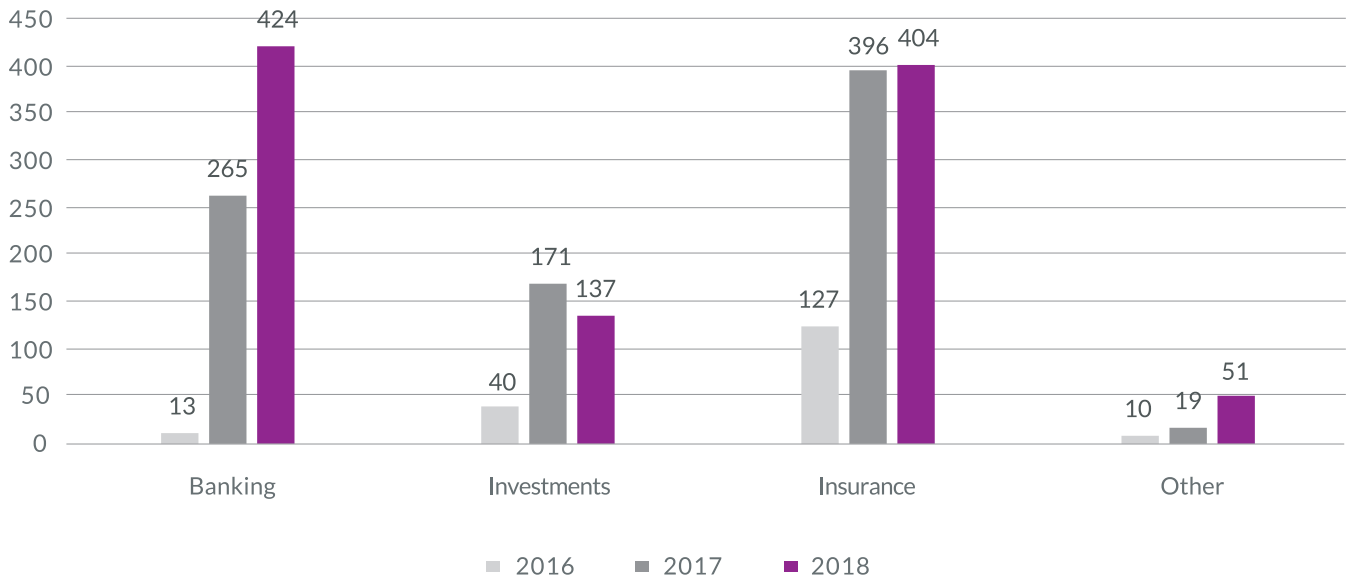


Figure 2 - Enquiries and minor cases (Type of origination)

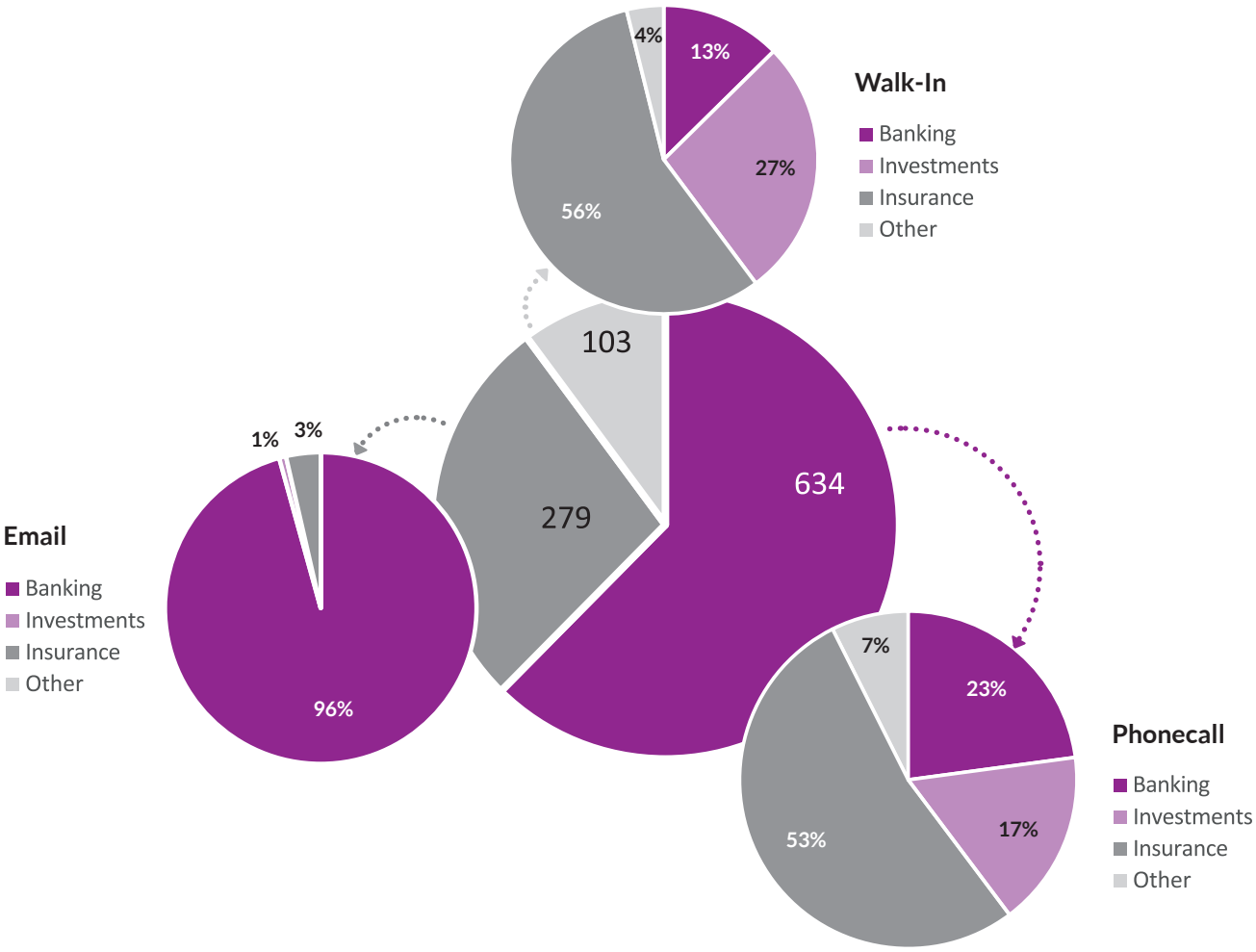


Figure 3 - Enquiries and minor cases (Outcome)

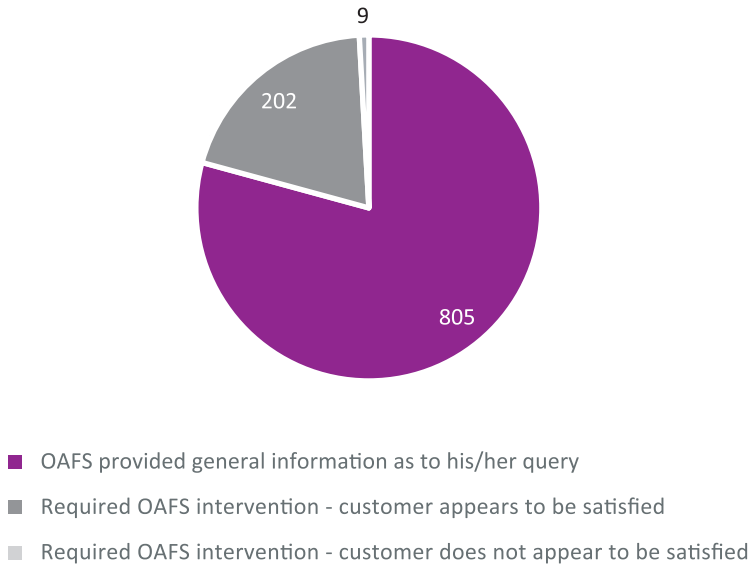
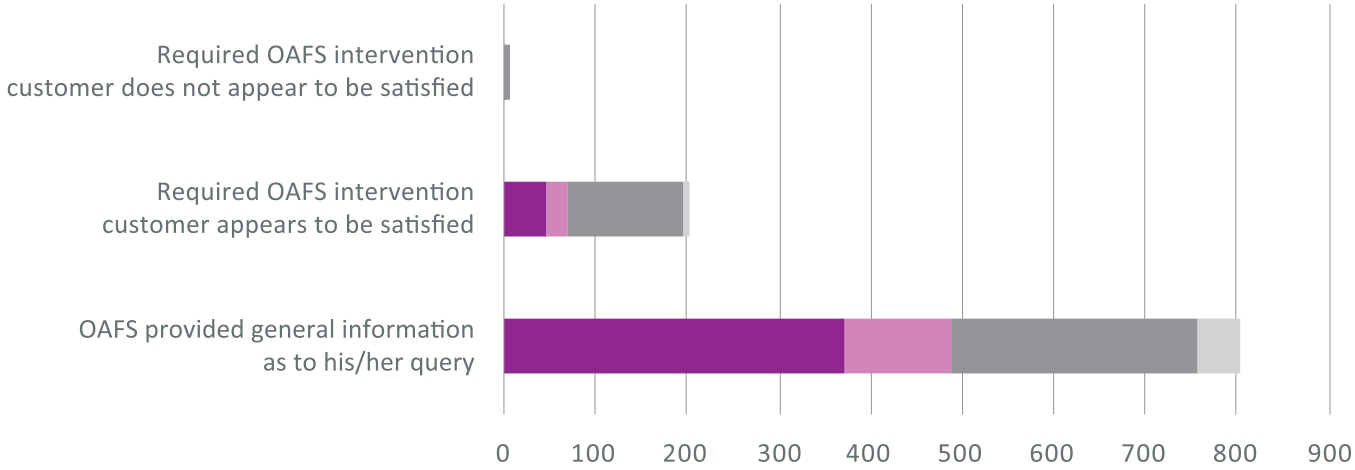


Figure 4 - Enquiries and minor cases 2018 (By type and outcome)



	OAFS provided general information as to his/her query	Required OAFS interventon - Customer appears to be satisfied	Required OAFS intervention - customer does not appear to be satisfied
Banking	374	48	2
Investments	114	23	0
Insurance	270	127	7
Other	47	4	0

Appendix 1 provides a graphical representation of the type of enquiries and minor cases received in 2018.

Complaints

Broadly speaking, a complaint is an expression of dissatisfaction or displeasure made by an eligible customer concerning the conduct of a financial services provider in regard to the type or quality of a product or service given by such provider and would normally involve a claim by the customer that he has suffered, or may have suffered, financial loss. Sometimes, the customer may also allege material inconvenience or distress. All complaints accepted by the Office have to be in writing and should clearly specify the name of the financial services provider, the reason for the complaint and the remedy that is being sought.

When a completed complaint is received by the Office, it is assessed in line with the Act: those complaints which fall outside its jurisdiction are rejected but, where appropriate, may be referred to the relevant body which can assist the complainants further. Prior authorisation from the customer would always be sought in such situations.

The Office can only accept complaints from eligible customers (see below) against financial services providers which are or have been licensed or otherwise authorised by the Malta Financial Services Authority and which have provided services in or from Malta.

An eligible customer is either a consumer of a financial services provider, or to whom the financial services provider has offered to provide a service or who has sought the provision of a financial service from a provider. The Office cannot, for instance, accept motor insurance complaints where the complainant is a third party or if liability is being disputed.

The Office is also unable to accept complaints whose merits are or have been already the subject of a law suit before a court or tribunal initiated by the same complainant on the same subject.

The Office is therefore unable to accept complaints against providers which are authorized in any other EU member state but offer a financial service in Malta on a cross-border basis or through a locally-established branch (under a freedom of establishment basis).

The law prevents the Arbiter from reviewing complaints if the financial services provider has not been given a reasonable opportunity to review the customer's contentions prior to filing a complaint with the Office. In this regard, a customer should write to the financial services provider outlining its contentions and allow reasonable time (15 working days) for the provider to respond in writing. The complainant's letter, together with the financial services provider's response, should be attached to the complaint form. The Office may also consider complaints if the provider has been given the opportunity to review a customer's complaint but fails to provide a response within a reasonable time period.

Complaints submitted to the Office should be typed. Where necessary, the Office's administrative staff may also transcribe complaints for unassisted customers or those who may not have access to a computer.

Complaints are required to be lodged in Maltese, except for those submitted by non-native customers. Complainants are not required to translate technical terms into Maltese.

Most importantly, copies of any relevant supporting documentation ought to be attached to a complaint.

The charge for lodging a complaint with the Office is €25 which is reimbursable in full if the complainant decides to withdraw the complaint or the parties to the complaint agree on a settlement of the dispute before a decision is issued by the Arbiter.

Once a complaint is accepted and processed by the Office, it is transmitted to the provider by registered mail for its comments. The provider has 20 days from date of delivery to submit its response to the Office. Failure to do so would likely render the provider contumacious and the Arbiter may decree inadmissible any late submission of such response.

A copy of the provider's response is sent to the customer. Contemporaneously, the complainant and the provider are invited to refer the case to mediation. It is a requirement of the law that, where possible, cases should primarily be resolved through mediation.

Complaints lodged with the Office (by sector)

In 2018, the Office received 192 complaints, a 10% increase over the previous year. Table 1 provides a breakdown of the number of complaints received by sector since the Office was setup in 2016.

Table 1 – Formal complaints (by sector)

	2018	2017	2016[1]
Banks and Financial Institutions	**39**	40	13
Investment providers	**134**	112	138[2]
Insurance	**19**	23	21
Others	/	/	1

[1] *The number of complaints for 2016 (June to December) has been adjusted to reflect the actual number of cases received, rather than the number of complainants collectively making up such cases.*

[2] *This includes nine cases (comprising 400 complainants) which were treated as one collective complaint (Case reference 28/2016) given that their merits are intrinsically similar in nature, and a further 38 complaints filed separately by different complainants. In the latter cases, each case was treated on its merits. All these cases concern a collective investment scheme. Refer to page 47 of this report for further information about the Arbiter's decisions regarding this investment.*

Complaints lodged with the Office (by category):

Complaints may be lodged against all financial services providers, which are or have been licensed or otherwise authorised by the Malta Financial Services Authority Act or any other financial services law, including but not restricted to investment services, banking, financial institutions, credit cards, pensions and insurance, which is or has been resident in Malta or is or has been resident in another EU / EEA Member State and which offers or has offered its financial services in or from Malta.

Table 2 provides a detailed breakdown of the 192 cases received in 2018 by category:

Table 2 - Formal complaints in 2018 (sectoral and type)

Banking	**39**
Cards – Unauthorised use	*3*
Charges	*1*
Cheque encashment	*1*
Specialised loans and advances	*30*
Poor Service	*1*
Bank Transfers	*1*
Refusal to open account	*1*
Closure of account	*1*
Investment Services	**134**
Bad Advice / Mis-selling	*45*
Calculation of interest/yield	*3*
Charges	*3*
Delay (payment)	*3*
Related to a particular collective investment scheme	*18*
Pensions-related	*61*
Other	*1*
Insurance	**19**
All Commercial Policies	*1*
Health insurance	*1*
Home insurance	*1*
Life insurance	*11*
Marine & Pleasure Craft	*1*
Pet insurance	*4*

Appendix 2 lists the financial services providers against which complaints have been lodged with the Office in 2018.

Type of complainants

Natural persons and micro-enterprises – which the law defines as "customers" - may lodge a complaint with the Office. A micro-enterprise is an enterprise which employs fewer than ten persons and whose annual turnover and/or annual balance sheet total does not exceed €2,000,000. Only two, out of the 192 complainants, were micro-enterprises.

54% (103) of the complaints originated from customers residing outside Malta and who acquired the service from Malta mainly on a cross-border basis. The majority of these complainants (95) reside in a Member State of the European Union (UK: 36; Spain: 34; France: 17; Germany: 3, Austria, Greece, Croatia, Bulgaria and Portugal: 1 each). The other eight complaints originated from Turkey, Bermuda, Canada, Ghana, Japan and Malaysia. The remaining 89 complaints (46%) originated from customers residing in Malta.

Complainants are not required to be represented when lodging a complaint with the Office. Of the 192 complaints received, 161 (84%) were unassisted. The Act requires the Arbiter to hold at least one sitting for the hearing of a complaint. If only one party is represented or assisted during oral hearings, the Arbiter shall ensure the hearing remains fair to both parties.

Temporal limits

Eligible customers had until 18 April 2018 to submit a complaint for consideration by the Arbiter in relation to the conduct of a financial services provider which occurred between 1 May 2004 and 18 April 2016 (the latter being the date of the coming into force of the Act). No further complaints in relation to conduct occurring before the coming into force of the Act are admissible.

For complaints relating to the conduct of a financial services provider which occurred on or after 18 April 2016, the Arbiter shall have the competence to hear such complaints as long as the complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.

Of the complaints received in 2018, 116 (60%) cases were triggered by an event occurring after the coming into force of the Act (that is, 18 April 2016). The remaining 76 (40%) were triggered by an event before 18 April 2016.

The table below gives a further breakdown by category.

Table 3 - Complaints received (temporal limits, by category)

	Cases triggered by an event *before* 18 April 2016	Cases triggered by an event *after* 18 April 2016
Banking	31	8
Investment Services	45	90
Insurance	/	18
Total	76	116

Mediation

All complainants are offered mediation as an alternative method of resolving their dispute.

The law states that, whenever possible, complaints should be resolved by mediation. Indeed, the Office strongly encourages parties to a complaint to refer their case to mediation.

Mediation is a process whereby the parties to the complaint try to reach a solution through agreement with the assistance and support of a mediator, rather than through a formal investigation and adjudication of the complaint by the Arbiter.

Mediation is an informal process but it is also confidential and conducted in private.

Mediation can only occur if both parties to the dispute agree to participate. It is thus not obligatory and either or both parties may reject it and proceed directly to the investigative and adjudication stage.

If the complainant and the provider agree on a settlement during mediation, what has been agreed will be written down and communicated to the Arbiter. Once it has been signed by both parties, and accepted by the Arbiter, that agreement becomes legally binding on both the complainant and the provider. This concludes the dispute, thus ending the complaints process. The complainant will be reimbursed the complaint fee of €25.

A party to a mediation cannot be forced to accept a settlement or outcome. The mediator will not impose a decision on the parties. Both parties must voluntarily agree to the outcome. If either party chooses not to engage in mediation, or if the mediation proves unsuccessful, then the complaint will be dealt with by way of investigation and adjudication.

The Office has a dedicated official who is tasked with coordinating and conducting mediation sessions.

In 2018, of the cases submitted to the OAFS, only 16 cases were referred to mediation. A further 13 mediation sessions could have been convened had the complainants not renounced to mediation at the last minute.

That said, however, it is positive to note that five cases were resolved after mediation and a further 28 cases were resolved prior to the commencement of mediation. In the latter category, the officer in charge of mediation actively engaged with the financial service provider concerned to reach an amicable solution on the basis of the evidence that was presented in the complaint and the provider's response.

There is clearly substantial scope for parties to agree to submit their case to mediation and reach a common ground without the need to refer the case to adjudication. Mediation will not compromise the parties' standing if it fails and, if the parties are amenable to finding consensus through a mature and an informal space for discussion, it is an opportunity that could effectively bring closure to a case.

Mediation may not necessarily relate to an issue where compensation is being demanded. It should also serve for both parties to a dispute to seek further information from each other (mostly from the provider) in relation to the contentions being made. Most often, complaints arise because of inadequate communication or severe lack of engagement by the parties at the very early stages of a complaint.

Outcome of complaints

Not all complaints lodged with the OAFS require review and adjudication. Some complaints may be resolved at an early stage or after mediation. There may also be situations where the complainant withdraws the complaint either for personal reasons or a private agreement between the parties would have been reached.

In regard to 13 cases, the parties to a complaint agreed a suggestion for compromise during the first oral hearing. The table below gives a breakdown of the outcome of 227 complaints closed in 2018.

Table 4 – Complaint Outcomes

Agreement was reached at mediation	5
Withdrawn prior to mediation	14
Parties agreed to settle prior to commencement of mediation	28
Complaints withdrawn following mediation	1
Complaint returned to customer / not in conformity	17
Complaint withdrawn following case hearing	4
Complaint withdrawn prior to case hearing	6
Agreement reached by the parties during hearing before the Arbiter	13
Decided by the Arbiter for Financial Services (see Table 5)	139

The review and adjudication process

If mediation is refused or unsuccessful, the Arbiter will commence the process for review of a complaint.

The law requires that at least one oral hearing is convened for each case that is referred to the Arbiter. The parties submit their case supported by oral and/or written evidence. They also have the possibility of filing a note of final submissions.

An average of two to three sittings a week were convened by the Arbiter for Financial Services. For the benefit of overseas complainants, hearings were held via video conferencing.

Oral evidence given under oath at a hearing will be forwarded by the Arbiter to both parties to the dispute. Affidavits may be sworn at the OAFS by two of its officials who, at the initiative of the Office, have been appointed by the Minister for Justice, Culture and Local Government as Commissioners for Oaths.

Findings and awards

Final decisions of the Arbiter are accessible on the Office's website in their entirety, except for the complainants' name which is pseudonymised.

The following table provides a breakdown of the 125 cases for which the Arbiter for Financial Services issued a final decision, as well as a further 14 preliminary and follow-up decisions (such as clarification of awards or corrections).

Appendix 3 gives a detailed breakdown of the Arbiter's decisions delivered in 2018 by the financial services provider's name, type of complaint, outcome and whether the decision has been appealed or is *res judicata*.

Table 5 – Decisions of the Arbiter (By sector)

		Banking	Investment Services	Insurance
Preliminary and follow-up decisions	14	/	12	2
Cases upheld in full	100	/	97	3
Cases partially upheld	3	/	1	2
Rejected cases	22	5	13	4
	139	5	123	11
Final Decisions				
Res judicata	56	5	43	8
Appealed	69	/	68	1

Average duration of cases

As said earlier, a number of cases were terminated after agreement between both parties at mediation or just before commencement of mediation. In regard to those cases in which an agreement was reached at mediation, it took an average of 176 days from the date of receipt of a complaint for the case to be concluded amicably. In respect of those cases where the provider agreed to settle prior to commencement of mediation, it took on average of 86 days for such cases to be concluded.

The ADR Directive requires that dispute resolution proceedings should be concluded expeditiously within a timeframe of 90 calendar days starting on the date on which the ADR entity has received the complete complaint file including all relevant documentation pertaining to that complaint, and ending on the date on which the outcome of the ADR procedure is made available. In cases of a complex nature, it is not possible to reach this time-frame. In fact, in regard to complex cases, Article 26(2) of the Act gives the Arbiter one year from the date of receipt of a complaint to deliver his decision but that no nullity shall ensue if such time limit is not met.

A complaint which is referred to the Arbiter for investigation and adjudication (that is when mediation efforts are unsuccessful) cannot possibly be decided within 90 days from the date of receipt of a complaint as naturally, it would not be complete in terms of supporting documentation and information. In addition, there is a process that the law requires the Office and the Arbiter to follow during a case review (such as waiting for the financial services provider to submit a reply within 20 days from being notified of a complaint, arranging for mediation, convening at least one sitting, requesting parties to submit affidavits and further information, as

well as allowing for cross-examination and filing of final notes of submission). Although the Arbiter has insisted on parties' representatives to file brief submissions, the process as is required by law to be followed usurps a substantial part of this period.

If one had to consider the time-frame for decisions as specified by the ADR Directive, the number of days taken from the date the file was complete up to the date of decision averaged 53 days and 123 days for banking and insurance complaints, respectively.

Investment complaints averaged 282 days, a clear indication of the number and complexity of such cases. Nearly all cases relating to investment services alleging mis-selling or bad advice are complex in nature and most often require analysis not only of the submissions that are made by the respective parties, but also of the voluminous documentation that is submitted as part of the review process such as contract notes, client confidential profiles, appropriate or suitability tests, terms of business agreement and valuation statements. In most complex cases relating to investment services, the Arbiter conducted his own research into the investment products that were the subject of the complaint. This is a process which inevitably takes time to mature and conclude.

Summary of decisions delivered by the Arbiter

The following section provides a summary of a number of decisions delivered by the Arbiter for Financial Services in 2018. It is intended to provide an insight on the complaint, the financial services provider's response and the Arbiter's deliberations. Italicised words under each heading indicate themes pertinent to the respective case.

The full text of the decisions is available on the Office's website (www.financialarbiter.org.mt). The name of the complainant is pseudonymised.

Legal pleas raised by financial services providers

As part of their replies to complaints lodged by customers, some financial services providers raised a number of legal pleas such as those that were aimed to challenge the Arbiter's competence to handle the complaint. In other cases, the provider claimed that the submission of the complaint was time barred in terms of the Maltese Civil Code. A summary of the Arbiter's deliberations on the various legal pleas is provided.

Jurisdiction

The plea: The Arbiter did not have any jurisdiction on the case as the "Terms of Business Agreement" – which is an agreement that outlines the relationship of the provider with the complainants - assigned such jurisdiction exclusively to the Maltese Courts.

As to the plea of lack of jurisdiction, among other reasons, the Arbiter held that at the time of signing of the Terms of Business Agreement (predating the coming into force of the Act on 18 April 2016), the Office of the Arbiter for Financial Services had not yet been established and consequently the parties could not have excluded the Arbiter's jurisdiction. Hence, there was no doubt that the Arbiter had jurisdiction on the case and consequently the parties could not have excluded the Arbiter's jurisdiction.

The Court of Appeal (Inferior Jurisdiction) confirmed this line of reasoning in a decision delivered during the reporting year. It said, among other aspects, that the coming into force of the Arbiter for Financial Services Act on 18 April 2016 gave the customer an *alternative* legal forum to which a complaint against a financial services provider could be referred. Such forum does not replace the customer's right to refer a case to the Court, if it so chooses. The Court also said that there may be circumstances where a forum selection clause is made redundant as there was no doubt that when the Terms of Business Agreement had been signed, none of the parties had foreseen the introduction of a law such as Chapter 555 (the *Arbiter for Financial Services Act*). The Court said that this law gives an *ad hoc* opportunity to the customer to refer a case to the Arbiter for Financial Services against a financial services provider by way of a simplified process, which opportunity the complainant could not have renounced as it did not exist at the time the contract had been signed.

Nullity

The plea: The financial services provider asked the Arbiter to declare the complaint null and void because it lacked formal requisites, it was unclear and did not specify the reasons behind the complaint.

The Arbiter held that the plea of nullity was treated even by the Courts in a very restrictive way because judicial acts should be saved to allow justice take its course. Chapter 555 of the Laws of Malta established an informal way of filing a complaint before the Arbiter. In these cases under examination, the service provider not only understood the complaint but had filed an extensive reply as well as a detailed note of final submissions.

The Court of Appeal (Inferior Jurisdiction), in a judgement delivered following an appeal lodged by the provider after it felt aggrieved by the Arbiter's decision, also rejected this plea on the grounds that the complainants were not simply declaring facts – as alleged by the provider – but that they had also attributed a number of shortcomings and irregularities relating to their failed investment holding. Their complaints were also explained in detail in the documents annexed to the complaint form.

Some providers, on the other hand, asked the Arbiter to declare the complaint null and void as it was not in summary form and thus inadmissible since it was drafted

in a way that rendered it impossible for the service provider to make its defence.

The Arbiter rejected this plea and maintained his position, based on copious case law, that unless extraordinary circumstances exist no documents filed by the parties will be struck off but would nonetheless weigh the relevance and materiality of each document submitted.

Prescription / temporal limits

Pleas: The action was time-barred and this in terms of Articles 2153 and 2156(f) of the Civil Code. Some cases also referred to Article 1222(1) of the Civil Code to argue that the complaint was, likewise, time-barred.

When such plea is raised, the service provider would contend that the prescriptive period was to run from the purchase date of the investments. In a typical case relating to an investment which was acquired in September 2004, the Arbiter contended that the provider's argument was unrealistic and illogical since it was reasonable for an investor to allow sufficient time during which to determine the performance of the product purchased; and this particularly when such performance was naturally subject to market fluctuation. The complainant became aware with certainty in 2012 that his investments were failing; he issued a judicial letter to the provider in 2015 to interrupt the prescriptive period and submitted a complaint in 2016. Hence, these actions were well within the five-year prescriptive period.

A two-year prescription, based on Article 2153 of the Civil Code, would not apply since the relationship between the partiesr - the complainant and the financial services provider - is based on a contractual obligation.

For instance, an investment transaction between the complainant and the service provider was of a commercial and contractual nature. In this case, determining whether the action was time-barred or not should be by reference to Article 2156(f) of the Civil Code that envisages a five-year prescriptive period.

Such period runs from the date when the complainants could have incepted the proceedings, and not from the start of the "business relationship" between the complainants and the service provider. Prescription would not start to run from the date of the contract. In financial services, the customer cannot be in a position to initiate legal proceedings from the date it purchases a financial product but rather from the date when certain circumstances manifest themselves in such manner that lead to the belief that the service received was not as proffered.

When Article 1222(1) of the Civil Code was referred to by the financial services provider, the Arbiter observed that this article envisages a two-year prescriptive period in cases of the rescission of an obligation. This was inapplicable since no such rescission was being requested, the Arbiter determined.

The Act requires that the issue of prescription be raised at the outset; that is, in the service provider's initial reply to the complaint as lodged with the OAFS and not at any later stage of the proceedings, such as in the note of final submissions. This is consistent with Court jurisprudence.

Opening of a basic payment account (28/2017, 171/2017)

Complaints rejected

Basic payment account, extent of application of EU Directive 2014/92/EU, due diligence processes

The two cases described below are related not only because they had both been filed by the same person but the reason for the complaints was, in both instances, the refusal by the bank to open a basic payment account. In the first case, the complainant lodged the complaint as director of a company. In the second case, the complainant lodged a complaint in his own name.

In the first complaint, the complainant, in his capacity as director of a company established in Malta, lodged a complaint against the bank claiming that it had refused to open a basic payment account for the company in terms of Directive 2014/92/EU.

In summary, the complainant claimed that he had an export-oriented mining company in a third country and, given exchange control restrictions in that country, he had decided to set up a company in Malta. He

approached one local bank for the purpose of opening an account and provided it with information as part of the due diligence process.

During a meeting he held with bank officials to go through such information, the bank asked the complainant several questions including why he had not held any personal bank accounts elsewhere. He claimed that he did not require one as he used his wife's bank account for his personal needs and that if he had used a personal account for his company, all transactions into that account might appear as income for the company, which would be taxed accordingly. The meeting, according to the complainant, did not take more than 10 minutes. Some days later, he was informed that the bank had declined the application without providing specific reasons.

He exchanged further correspondence with the bank from which he learnt that the refusal seemed to have been based on an internet article which contained information in his regard that was libellous and defamatory. He also contested the bank's allegations that he was intending to use the account to forward payments from other jurisdictions, which the bank claimed were high risk.

As a remedy, he requested the bank to open a basic payment account for the company and provide him with a written apology for the way it had treated him.

In its reply, the provider claimed that the said EU directive applies only to physical persons and does not apply to commercial companies. It also stated that, following the due diligence process it had conducted, it resulted that it could not open an account for the company, and this for a number of reasons.

It claimed that, as part of its due diligence process, it had asked the complainant to explain why he had not held a bank account elsewhere when the customer's operations spans four jurisdictions, with no personal bank account being held in any of these jurisdictions where he is a national, resident or effectively managing a company.

It could neither accept a bank reference issued by a foreign banking institution in regard to the name of a company with which the complainant was a director as it did not refer to the natural beneficial owner, namely the complainant.

As to the article, the bank claimed that it had ignored it altogether as its contents could not be proven through other reliable sources.

In his deliberations, the Arbiter contended that:

1. Directive 2014/92/EU, as transposed in Maltese subsidiary legislation, grants a right for consumers to open and use payment accounts with basic features in Malta. "Consumer" is defined as "any natural person who is acting for purposes which are outside his trade, business, craft or profession". There was no doubt that the directive and regulations wanted to offer a basic payment account to individuals and not to corporate entities. The complainant's argument that he had a right to open an account for his company in accordance with the directive was not justified.

2. The request for a bank reference of the ultimate beneficial owner of the company was reasonable and necessary.

3. The argument brought forward by the complainant as to why he did not have a bank account in his own name was not convincing and justified. It was justified for the bank to enquire why the complainant did not have a bank account in any of the jurisdictions in which he was involved in by way of nationality, residence or business.

4. The bank's insistence to request information and documentation as part of its due diligence process did not amount to high handedness.

The Arbiter rejected the complaint. The decision has not been appealed.

In the meantime, the complainant asked the same service provider to provide him with a basic payment account for his personal use.

The service provider asked the complainant to provide information and submit a number of documents, including details relating to the provenance of his salary. The complainant replied that his income would be externally sourced from within the EU and that he was not employed with a Maltese firm.

The bank asked the complainant to respond to three questions relating to his statement that he did not have an account with any other bank and was thus unable to provide a banker's reference. He replied that he had used his company's accounts for personal use and as he was setting up a consultancy services company based in the EU, he was in need of a personal account.

The bank found the replies given by the complainant to be generic and inconclusive, and once again asked him

to respond to its queries. The complainant eventually answered the questions in which he stated that he had never attempted to open a personal account and that he was self-employed.

The service provider was not satisfied with the answers and refused to open a bank account.

The complainant lodged a complaint against the bank for refusing to open a basic payment account in terms of Directive 2014/92/EU.

In its reply, the bank contended that:

a. The complaint was the result of submissions which the same provider had made in another case instituted by a company (of which the complainant was a director) with the Arbiter in which the provider had stated that commercial partnerships were not entitled to a basic payment account under the same directive.

b. The complainant had refused to answer the various questions that the provider had put to him to satisfy the bank's duties of due diligence, as imposed by law. It said that questions it had posed to the complainant as to why no bank had accepted to provide him with a bank account, not even those of his own country or where he was resident, remained unanswered.

In his deliberations, the Arbiter held that:

1. The Payment Accounts Directive, as transposed in Maltese law by virtue of Legal Notice 411 of 2016 defined "a framework for the rules and conditions to which Malta is required to guarantee a right for consumers to open and use payment accounts with basic features in Malta". Although the regulations contained provisions on non-discrimination against consumers legally resident in Malta and the EU by reasons of nationality and residence, and obliges credit institutions not to introduce burdensome procedures that make it difficult for consumers to open a basic payment account, providers were to refuse to open such an account if that would be in breach of anti-money laundering legislation.

2. Although banks should scrupulously follow the norms established by the directive to facilitate the opening of basic payment accounts, they could not overlook their duty of proper due diligence of prospective clients.

3. The information required by the bank was in no way burdensome or bureaucratic and did not use the due diligence process to discriminate or to serve as a pretext not to open an account.

4. The complainant had refused to comply with the bank's requirement and the stubbornness he had shown in his email replies to the bank were not conducive to a smooth business relationship between him and the bank.

The Arbiter rejected the complaint. The decision has not been appealed.

Incoming funds denominated in euro credited to an Australian dollar account (076/2017)

Complaint rejected

Remitting bank, beneficiary bank, incoming transfers, exchange loss

The complainant had been made aware that an amount of €270,000 was about to be credited into his bank account denominated in Australian Dollar (AUD) and the remitter, a legal firm, was based in Australia.

He contacted the bank's customer care department to stop the transaction as that would have entailed converting the amount exchanged from AUD to EUR again – a loss in exchange of around AUD10,000. He was advised to refer the matter to the branch in the morning. He visited the branch as instructed but was informed that his account had already been credited.

He claimed that bank staff had made him aware that it might be possible to stop the account from being credited. However, the branch manager and customer care staff had told him the opposite.

He asked for the bank to reimburse him €8,600, being the exchange loss.

The bank, in its reply, claimed that:

a. It was unable to stop the funds from being credited into the account as that would have been in breach of the remitter's instructions as well as those of its correspondent bank. It said that the only person who could have stopped the transaction was the remitter and its bank. The bank in Malta simply followed the order that had been given by its correspondent bank.

b. The beneficiary's details – including full name and bank account number – must have been provided to the remitting bank by the complainant or any other person the complainant had instructed to remit the funds to Malta.

The bank refused responsibility for the exchange loss and rejected any claim for reimbursement.

Based on the evidence provided, the Arbiter determined the following:

1. It is standard banking practice that the beneficiary bank is required to follow the instructions that are given to it by the remitting and/or correspondent bank. It is also accepted that, in this day and age, bank transfers are carried out electronically rather than manually. It is reasonable to expect a bank, such as the provider, to employ systems that are in line with such practices.

2. Based on documented evidence, it was manifest that the instructions from the remitting bank in Australia were clear and the beneficiary bank in Malta followed such instructions as expected.

3. It transpired that the complainant had contacted the legal firm that had the mandate to transfer the funds to him in Malta. However, by the time he had contacted them and made them aware that the currency of the account was different from the funds' denomination, his account had already been credited.

4. Moreover, the complainant was already convinced that the remitting legal firm was at fault for the mistake so much so that he had already complained to the competent office in Australia against such firm and received AUD5000 in compensation, which the complainant accepted. Indeed, the complainant submitted a copy of a letter he had sent to such office and admitted that it was the legal firm which had full control of the transfer.

The Arbiter decided that the bank was not responsible for the loss in exchange as a result of the AUD / EUR blunder, and the complaint was rejected. The decision has not been appealed.

Unauthorised withdrawal from an ATM (101/2017)

Complaint rejected

ATM, card withdrawal, PIN, cloned cards

The complainant claimed that while holidaying in Rome with his wife, his wallet got stolen and he only noticed this when he was about to pay for a taxi. He tried to get in touch with his bank but had no response.

The taxi driver drove the complainant and his wife to a police station to lodge a report. The complainant said that the bank had in the meantime sent a number of text messages on his mobile indicating a series of ATM withdrawals from two different cards, totalling €1250. He denied having the PIN in his wallet or that he had divulged it to others.

The provider contended that:

a. The withdrawal transaction sequence on the first card indicated that several withdrawal attempts of €250 had all been successful, a sign that the correct PIN had been entered for each transaction. There were no rejected prior attempts as a result of an incorrect keying in of the PIN. Further attempts on this card were however rejected as the daily withdrawal limit of €750 had been exceeded.

b. As to the second card, a withdrawal of €250 was successful at the first attempt, an indication that the correct PIN had been used. There were other withdrawal attempts on this card but all were rejected as the withdrawal limit for the day on that card had been exceeded.

c. The bank claimed that the cards that had been used for withdrawal were not cloned as the bank's systems recorded the 'transaction chip sequence' that clearly showed the cardholder's actual cards had been used. It also claimed that whoever had possession of the cards had equal access to the PIN.

The Arbiter looked into the evidence of the case and held:

1. The bank's systems sent text messages to the complainant's mobile phone a few seconds after cash had been withdrawn from an ATM. The complainant became aware of these text messages and his stolen wallet quite a while after the withdrawals took place.

2. Indeed, the time on the police report indicated that around one hour had passed from the time of the first withdrawal. When he contacted the bank, the complainant was informed of the ATM withdrawals and the bank blocked the two cards as well as other bank cards belonging to the cardholder as a precaution.

3. It was evident that the correct PIN was used for the cash withdrawals. It would have served no purpose for the fraudster to clone the card but then use the cardholder's actual card to withdraw the cash.

The Arbiter observed that although product providers are required to have secure systems for card processes, it was likewise important for cardholders to take all measures to ensure that their PIN is memorised and thus inaccessible to third parties.

The Arbiter rejected the complaint. The decision has not been appealed.

Fund transfer to an online trading account (29/2017)

Complaint rejected

Trading platform, payments, warnings, Financial Institutions Act, execution

The complainant held a trading account with a binary trading platform (established outside Malta) and wanted to transfer funds from his bank to such a trading account.

Based on instructions provided by the trading platform, the complainant transferred €40,000 to a service provider, a firm authorised in Malta, for onward transmission of such funds to the trading platform.

In his complaint, the customer claimed that the money to the service provider did not reach the trading platform.

It transpired, after several weeks of email communication with the trading platform, that half of the amount transferred ended up in an account of another trading platform apparently pertaining to the same company. The complainant claimed that he wanted his funds to be transferred in full to the intended trading platform, but after some time, the website of such platform was no longer active and could not be reached.

Some four months following the transfer, his trading account (with his preferred trading platform) was credited with €20,000 and a "bonus" of €20,000 showed up. The complainant claimed that "bonus" payments could not be withdrawn. He tried to withdraw the entire amount of €40,000 but without success.

The complainant contended that the service provider failed to affect the transfer to the trading platform as instructed and requested the repayment of the full amount transferred to the service provider.

The service provider submitted that it only acted as an intermediary and its role was limited to the execution of the instruction for the transmission of money received from the complainant to the trading platform. The service provider claimed that it had no relationship whatsoever with the trading platform.

During the hearing of the case, the service provider explained that it used to receive quite a few inward payments in favour of the same trading platform. It said that, prior to sending funds to the trading platform, it used to receive instructions from another service provider in Malta as to when and where to remit such funds for the credit of the trading platform. It said that outward funds to the trading platform used to be aggregated to save on transfer fees.

The service provider claimed that it had sent the complainant's funds to the trading platform, along with other funds. It claimed that it did so on instructions of such other third service provider.

In his decision, the Arbiter observed the following:

1. Internet searches undertaken by the Arbiter's Office regarding the binary options trading platform mentioned by the complainant yielded posts and articles which indicated that it was no longer in operation and that several international regulatory authorities had issued warnings regarding its lack of authorisation. Indeed, its regulatory status and place of operation were unclear.

2. The service provider should have been able to verify from its own records that the aggregate sum transferred to the trading platform included those of the complainant, rather than seeking confirmation from the third service provider.

3. In terms of regulations issued under the Financial Institutions Act, the service provider was obliged to ensure that the funds of each payment services user held in a common account remained separately identifiable at all times.

4. Notwithstanding certain regulatory shortfalls, there was no convincing and sufficient basis that such shortcomings had actually led to the loss of the claimed money in the circumstances.

5. Neither was there convincing evidence that the loss was due to the failure of delivery or adequate transfer of funds by the provider, whose role was

only limited to execution of the said transactions. Indeed, evidence produced during proceedings indicated that the trading platform had confirmed receipt of funds to the complainant.

The Arbiter rejected the complaint as, from the proof provided, the loss was attributable to the difficulties and problems experienced by the trading platform, as well as its reliability and integrity. The decision has not been appealed.

Travel insurance - compensation for stolen luggage (031/2017)

Complaint rejected

Theft of luggage, duty to report a loss, police report, policy terms and conditions

The complainant lamented the declinature of his claim for compensation, amounting to €18,000; this was in respect of the theft of his luggage at the start of a visit to a North African country in August 2016 together with his wife.

On arrival at the airport on 24 August 2016, the complainant and his wife hired a taxi, on which they had loaded their luggage; however, before the departure of the taxi, the airport police summoned them for interrogation. A policeman was left in attendance with the taxi concerned.

The interrogation took about 45 minutes; at the end of which, they were unable to trace the taxi and the police officer concerned.

The complainant contended that the airport police refused to issue a report about the incident, unless this stated that the luggage had been lost.

He further contended that, on contacting the insurer concerned, he was informed that he could lodge a report about the incident on his return to Malta. This was duly done on 11 November 2016.

Nevertheless, on submitting his claim under the travel insurance policy, the said insurer had declined it; and this on the grounds that no police report had been lodged and issued when the complainant and his wife had landed.

The complainant was therefore seeking the payment of the aforementioned amount, which was inclusive of some precious / valuable items that his wife and he had taken with them.

In its defence, the service provider stated that:

a. The travel insurance policy clearly and unequivocally stated the requirement of a report to be lodged with the local police within 24 hours of a loss (which was to be claimed under the policy); the said written report was then to be submitted in support of the eventual travel claim.

b. The requirement of a report from the local police in the country of the loss had been specifically reiterated during the 'live chat' which had taken place between the complainant and the insurer.

c. The complainant had not respected this specific policy requirement; instead, he had alleged that he had been "allowed" to lodge a report in Malta on his return when this was not the case.

d. The report lodged in Malta was made three months after the incident date and a full one-and-a-half months after the complainant's return from abroad.

In his deliberations, the Arbiter noted that:

1. The versions provided by the complainant and his wife, concerning their separate interrogation carried out by the airport police, were substantially in agreement.

2. The said airport police had refused to issue a report with the details of the incident since this might possibly have implicated them in the case.

3. The complainant had contended that he had repeatedly tried to lodge a report at the police station on his return to Malta; however, this was not initially possible in the absence of the relevant personnel who were authorised to take such a report and to input it in the police reporting system.

4. In his testimony, the complainant had admitted that any delay on his part in lodging a report with the Malta Police was due to the fact that he had been discouraged by the negative attitude of the insurer's claims officer. The latter had cast doubt on the report's effective validity; and this in view of the policy requirement that the report had to be lodged with the police of the locality where the incident occurred.

5. The record of the live chat between the complainant and the insurer's representative shows ambiguity on the latter's part. There are instances where the interlocutor insists that the complainant should obtain a police report from the foreign country; however, there are also instances where the interlocutor appears to concede that the filing of a police report in Malta by the complainant on his return would be equally acceptable.

6. The complainant appeared to be contradicting himself when initially stating that he had a copy of his chat with the insurer on 24 / 25 August 2016 and subsequently admitting that he did not have such a copy.

7. The veracity of the complainant's contention – that he had gone to the police station in Malta to file the required report immediately on his return (to Malta) but that he had failed to do this in the absence of a sergeant who was authorised to receive and record such reports – was highly doubtful. Under the standard police procedure, even a police constable was authorised to receive and record a report (not necessarily relating to insurance) made by any person and to issue such report as soon as reasonably possible.

8. It was more probable that the complainant had filed his report on 11 November 2016; that is, seven days after his claim had been declined.

9. The specific policy condition – requiring the filing, within 24 hours, of a report with the police of the locality where such incident occurs – was important since there would otherwise be the possibility of abuse by the policyholders.

10. The complainant's allegation, that the insurer's personnel had misled him, was unfounded; the facts of the case showed otherwise.

In the light of the foregoing, the Arbiter felt that the complainant had not satisfied the travel policy's terms and conditions; he therefore declined the complaint. The decision has not been appealed.

Life insurance - payment of interest on amount temporarily withheld by the bank (431/2016)

Complaint upheld

Life insurance policy, payment of capital, surrender, claim on proceeds, interest payable, opportunity cost

In summary, the case goes as follows:

In 2011, the complainant and her husband took out a capital protected policy from a life insurance company authorised in an EU member state. Her husband died a few months later and, upon notification, the life insurance company transferred the policy in favour of the complainant.

Around mid-2013, the life insurance company transferred its entire portfolio of life insurance policies – including the complainant's policy – to a life insurance company in Malta within the same holding group.

The complainant claimed that when she surrendered her policy a few weeks prior to its maturity in 2015, the bank delayed transferring her money with interest to her chosen bank account. Following exchanges of communication with the bank spanning a few months enquiring why her funds were being withheld, the bank informed the complainant that it would be withholding half of the policy's proceeds as, according to a law in the husband's birthplace (a Middle Eastern country), the heirs of her husband could have a claim on half of such policy proceeds.

The provider's legal counsel indeed informed the complainant's legal counsel that although the bank would immediately release half of the proceeds to the complainant, it would retain the other half as this portion could be claimed by the husband's heirs. The complainant was informed that her husband's heirs had until January 2018 to make a claim on such funds, following which the funds would be devolved to her.

During a hearing in January 2018, the parties informed the Arbiter that the capital had been paid to the complainant but she insisted on being paid the interest for the entire period of time the bank had withheld the funds.

The Arbiter held the view that the retention of proceeds by the provider until 2018 was unjustified for a number of reasons:

1. The assertion made by the provider's attorneys that the heirs of the complainant's late husband would have

a claim on half of the policy proceeds was not based on a specific law dealing with joint-policy holders of the late husband's birthplace. Their opinions were made on the premise that a court in such country could make an analogy with provisions of a joint bank account. The advisers did not produce any case law to substantiate their opinion and the advice was based on the presumption that the courts in such Middle Eastern country could possibly make such an analogy.

2. Although the service provider's right to guard its legal interest was not disputed, the Arbiter said that the interests of the client should likewise be safeguarded. Balancing differing interests might not be easy but service providers ought to ensure that they act fairly, which in this case they did not.

3. The Arbiter held the view that upon the death of the complainant's husband, she became the sole policyholder and beneficiary, and on the day of the policy surrender, she was entitled to receive the full value of the policy.

4. There was no issue in regard to the payment of the first half of the policy value that was paid with profits and interest to the complainant.

On the remaining half, the Arbiter determined that it would be reasonable for the provider to pay annual interest at 5.1% from the date of surrender till the date when this amount was paid. The rate was based on evidence provided by the complainant that she could have invested that capital sum at 5.1% per year. The decision has not been appealed.

Health insurance – compensation for medical expenses (142/2017)

Complaint rejected

Ex gratia settlement, chronic medical condition, policy endorsement, extent of cover, exclusion

The complainant lamented the declinature of her claim for medical expenses incurred in respect of a surgical intervention. Instead, the insurer concerned offered an *ex gratia* settlement and endorsed her policy to exclude any future claims in respect of the medical condition claimed for. The complainant contended that the said policy cover restriction was the result of the insurer's decision that the medical condition in question had become chronic or recurrent in nature; however, such decision had been made without seeking the advice of an independent expert.

In its defence, the insurer contended that:

a. The declinature of the reimbursement claim submitted by the complainant was motivated by the fact that it related to continuing treatment of the same medical condition.

b. The complainant had already been informed in writing, as earlier as October 2012, that the policy was designed to cover the cost of medical conditions that responded quickly to treatment; the cost of ongoing, recurrent or long-term treatment of a chronic condition (including monitoring and routine follow-up consultations) was excluded from the policy cover. The policy was then endorsed accordingly in October 2012.

c. The complainant had not objected to the foregoing; in fact, she had duly renewed her policy for a number of consecutive years preceding the claim in question.

In his deliberations, the Arbiter noted that:

1. The testimony given by the complainant's husband, which was confirmed by the complainant herself, had shown that the insurer concerned had already compensated the cost of two examinations undertaken, on medical advice, in 2010 and 2012; it had however declined to compensate the cost of the third examination undertaken, equally on medical advice, in 2017.

2. Following the aforementioned endorsement of the complainant's policy in 2012, the insurer had not heard from the complainant for five consecutive years, during which the policy had been regularly renewed by the complainant every year. It was only in 2017 that the complainant had approached the insurer again, this time about the claim in question.

3. Given the five-year period, it was logical to assume that the complainant had accepted (and was aware of the implications of) the policy endorsement limiting the future scope of the cover provided.

4. On contacting the insurer before her third examination, the complainant had been verbally informed by the former that this would not be claimable under her policy; and this in the light of the letter sent to her in October 2012 (whose receipt was not contested by the complainant).

5. Such verbal notification was then followed up in writing by an e-mail, dated 19th June 2017; this was before the complainant undertook the third examination.

6. The report submitted by a medical professional consultant, whose medical expertise was specifically sought by the Arbiter, confirmed that the complainant's condition was indeed of a chronic nature.

In the light of the foregoing, the Arbiter was of the view that the examination undertaken in 2017 fell within the cover exclusion which had been endorsed on the policy in October 2012.

Consequently, the Arbiter declined the complaint. The decision has not been appealed.

Travel insurance - compensation for theft of luggage (001/2017)

Complaint upheld

Theft of luggage from a locked vehicle, utmost good faith, contributory negligence

The complainant lamented the insurer's declinature of his claim for compensation in respect of the theft of his luggage from a locked vehicle parked in a public place while holidaying in a European country; and this on the grounds that it was left unattended.

He contended that:

a. the policy exclusion in respect of unattended luggage applied only in cases where a report was not filed with the police in the country of the incident; in his case, such report had been duly made;

b. the stolen luggage was in a vehicle's locked boot and therefore entirely out of the sight of any passer-by;

c. the police report confirmed that the boot had actually been forced open; and

d. the policy wording was unjust and contradictory; and this because attended luggage could not be stolen.

In its defence, the service provider stated that:

a. the policy wording was clear and unequivocal: theft of unattended luggage and/or theft from unattended vehicles was specifically excluded;

b. such exclusion would still apply even if the cardholder lodged a report with the local police within 24 hours of the incident; and

c. this policy clause was not unjust since there were indeed instances where accompanied luggage could be stolen.

In his deliberations, the Arbiter noted that:

1. The provider was not contesting the sequence of events put forward by the complainant (and confirmed by his wife) relating to the theft.

2. The insurer had not provided any examples where attended luggage could equally be stolen.

3. An insurance contract was based on the principle of "utmost good faith" between the contracting parties. The insurer was therefore required to inform the policyholder about the implications of the contract's terms and conditions; and this particularly vis-à-vis the extent of cover provided and its exclusions.

4. The actions undertaken by the complainant were reasonable and could not be faulted; he had left the vehicle in a public parking place and locked it before going to visit a museum. The mentioned exclusion clause in the policy had necessarily to give this aspect due consideration.

5. The complainant had acted negligently when leaving his passport (and those of his family) in the car; the importance of such a document warranted that it be carried on the person concerned.

6. The insurer could not reasonably expect that the complainant, or a member of his family, remain with the parked vehicle at all times so that it (and the luggage it contained) would not be 'unattended'.

7. The circumstances of the case showed that the provider's interpretation of the policy wording (to decline the complainant's claim) was unjust, inequitable and unreasonable.

8. The maximum amount claimable under the policy for the loss in question was €2,330 in all; and this regardless of the number of travellers involved.

In light of the foregoing, the Arbiter ordered the provider to pay the said amount of compensation for the loss sustained from the theft of luggage but declined compensation for loss of passport. The decision has not been appealed.

Comprehensive motor policy – to repair or scrap? (023/2017)

Complaint upheld

Utmost good faith, settlement, total loss, beyond economic repair, contumacious, monetary offer

The complainant claimed the reimbursement of the repair cost of his accidented car (amounting to €1,291.30) insured for €2,000 by the provider under a comprehensive motor policy; and this in contrast with the provider's settlement offer of €800 in exchange for the vehicle's scrappage.

The provider was contumacious; that is, its submissions were disallowed from being entered in the proceedings because of their being filed beyond the time limit stipulated by the Act. However, in accordance with the relevant case law, this was not to be construed as an admittance of the complainant's contentions or as having renounced its rights in the case.

In deliberating on the matter, the Arbiter noted that:

1. According to the testimony given by the repairer, the vehicle did not sustain any serious structural damage (for example, to its chassis); rather, the damage concerned solely its external panels and was duly repairable.

2. The repair cost was well within the insured value of the vehicle. Hence, the latter should not have been declared by the provider to be a "total loss"; that is, beyond economical repair.

3. An insurance contract was based on the principle of "utmost good faith" between the contracting parties. This put specific duties on each party; for example, the policyholder was required to declare to the provider all the material facts pertaining to his case.

4. On its part, the insurer could not avail itself of this important principle to avoid settling a claim or to identify any reason(s) for not paying; and this once an insured peril had actually materialised.

5. Local case law confirmed that a policyholder was fully justified in refusing to scrap an accidented vehicle which was repairable; all the more so when the provider's settlement offer in monetary terms would not have enabled his purchase of a substitute vehicle (of the same material condition).

6. It was inequitable and unjust of the provider to label the vehicle concerned as a "total loss" when it was actually repairable as well as to offer as monetary compensation an amount that it had unilaterally determined.

7. The said monetary offer was far short of the cost of a replacement vehicle; hence, the complainant would not have been reinstated to the same position he enjoyed before the accident in question.

In the light of the foregoing, the Arbiter upheld the complaint. The decision has not been appealed.

Life insurance - recovery of maturity value (019/2017)

Complaint upheld

Life insurance, estimated maturity value, utmost good faith, reasonable and legitimate expectations of the customer

In 1991, the complainant purchased from the provider a 25-year endowment assurance with profits and accidental death benefit life policy, which was to mature in July 2016.

The provider had bound itself in writing that the "estimated maturity value for this policy was approximately Lm10,104". That would equate to around €23,535.

However, in June 2016, the provider had informed the complainant in writing that the policy maturity value was to be "just" € 14,161; it had "justified" the shortfall by referring to the "underlying investment performance" which had deteriorated over the years.

The complainant was therefore requesting to be accorded the amount promised when purchasing the policy, plus interest.

In his deliberations, the Arbiter noted that:

1. In accordance with established case law, the provider's absence from the proceedings was not to be interpreted as an admission but as a challenge to the complainant's contentions.

2. The provider's note of final submission was not the proper legal means through which it could add new evidence or raise defences at this stage.

3. In the quotation initially provided to the complainant as well as in a subsequent letter dated 3 October 1991, the policy maturity value is constantly qualified by the term "approximately", thereby implying that the final maturity value would actually be reasonably close to this amount.

4. In a letter dated 6 September 2016, the provider had explained at length the reason(s) why the underlying investment performance had a bearing on the final maturity value; such explanation – intended mainly to justify its position – should have been delivered at the policy purchase stage. There was no evidence that this had been done.

5. The Arbiter had no reason(s) to doubt the complainant's contention that the provider's representative had not informed him about the premium investment and that the maturity value would be prejudiced if such investment failed to perform properly.

6. The Arbiter was morally convinced that the complainant would not have purchased the policy unless he had been assured and was certain he would be getting the promised maturity value.

7. It was not reasonable nor was it equitable that – in selling the policy to the complainant – the provider's representative focused solely on its positive features without mentioning any possibly negative aspects.

8. The relationship between the provider and the complainant was governed by the principle of utmost good faith whereby each party respected the duties it had assumed. On its part, the complainant had dutifully paid the required premium over the 25-year span of the policy.

9. When an expectation – as in this case – had been created, it had to be honoured. The complainant had every right to expect the promised maturity value at this late stage of his life.

In the light of the forgoing, the Arbiter upheld the complaint. While noting that the maturity value had been indicated at approximately Lm 10,000 (equivalent to €23,293), he established the amount of €20,000 as the reasonable and equitable compensation that the provider had to pay to the complainant.

The Arbiter's decision was appealed.

However, the Arbiter's decision was fully upheld and confirmed by the Court of Appeal (Inferior Jurisdiction). In its deliberation, the Court commented that the Arbiter had addressed satisfactorily all the issues brought by the provider in the proceedings and that his decision was well motivated.

Advice to invest in a portfolio of bonds (400/2016)

Complaint rejected

Investment loss, execution only, advice, portfolio diversification, medium to high risk appetite, knowledge and experience

The complainant stated that:

a. He had suffered investment losses on a number of bonds following advice by the provider. Such advice was not in line with his knowledge and experience, as well as his risk appetite.

b. He had not been provided with documentation relating to the investment. Neither had he been given information about the investments and their risk characteristics.

c. Although the service with which he had been provided, refers to "execution only" he relied on the provider for advice.

d. No proper due diligence was carried out by the provider on the financial soundness of the firms which issued the bonds that he had been offered. The provider should not have offered such bonds in the first place.

On its part, the provider contended that:

a. The allegations put forward by the complainant were unfounded in fact and at law, and should therefore be rejected with costs.

b. It had always acted within its duties in terms of the regulatory framework at the time of the transactions.

c. It rejected any claims that it fell short of safeguarding its customer's interest.

The Arbiter, in his deliberations, observed:

1. The complainant was 55 years of age, with basic knowledge of two languages, Maltese and English.

2. The complainant, taking the witness stand, stated that although the provider used to furnish him with documentation, he never understood the technical descriptions contained therein.

3. When he visited the provider, he had emphatically made it clear that he had no experience in investments and required the services of an adviser for investment guidance. He rejected the fact that he sought investment risk.

4. The provider, on the other hand, stated that the complainant's portfolio was made up of a range of investment instruments and funds. The complainant used to visit their offices frequently. The complainant used to purchase instruments which were priced below par to make capital gains once the bonds matured.

5. The provider presented a detailed schedule of investments made by the complainant, including any capital gains/losses from investments, and relative distributions of interest. The majority of these investments had a high coupon and many of such investments were indeed purchased below par for eventual capital gain on maturity.

6. Performance on his portfolio was varied. He had registered profits, losses and broke even as well.

7. Although the investor registered an overall loss from his investment, the Arbiter noted that the portfolio was wide and composed of many direct bond holdings paying high coupon rates, which of course carried a greater element of risk. The portfolio was generally medium to high risk.

8. Going through the documents, it was evident that a proper record of the many conversations the investor had with the provider had been kept. In client review forms, the investor's profile was always identified as being medium to high risk.

9. The long list of investments, acquired over a wide span of years, do not give credibility to the complainant's assertion that he had never been given information about the investments and their respective risk. It was established that frequent meetings used to be held with the provider.

10. The complainant had built knowledge and experience not only from investing in bond portfolios but also from investing in direct bonds. Although he used to diversify investments, such diversification was on investments with the same risk characteristic.

11. There were no indications that the investor was not in a position to absorb the financial losses he incurred.

The Arbiter rejected the complaint on the basis that it was not deemed fair, equitable and reasonable. The complaint has been appealed.

Advice to invest in a speculative bond (162/2017)

Complaint upheld

re-investment of proceeds, loss recovery, low to medium risk appetite, bond rating, speculative bond, knowledge and experience, reinstatement of losses

The complainant and his wife held a portfolio of bonds which they acquired in 2010. Over a span of years, they made a number of transactions always with the intention to preserve the value of the capital and earn some interest. At one point, their portfolio of bonds decreased by nearly a third in value and they requested their provider to redeem their holdings. The provider told them they could recoup their lost capital by reinvesting the proceeds in a bond which was due to mature in two years' time. After considering the provider's suggestion, they agreed to follow the provider's advice to re-invest the proceeds in the advised bond.

The complainants insisted that they always wanted investments with a low to medium risk factor. Some time after they invested, they received a letter from the provider indicating that their bond had been spilt into two other bonds, which were long-dated and which threw their plans to share their wealth with their siblings on the intended maturity of the bond into disarray.

In their complaint, they claimed that the bond that had been offered to them did not match their risk profile. They had been assured that the bond would repay capital in full on maturity.

The provider claimed that:

a. The losses suffered by the complainants was the result of circumstances which were beyond its control. It said that such losses were the result of market and credit risks.

b. As to the bond in which the complainants re-invested their proceeds in, it claimed that the complainants were aware of the increased risk in the bond because the intention was to recoup the losses in investments they had sustained. It said that the complainants had been investing in similar investments for a number of years.

c. It denied that it had given any guarantees of automatic payment of capital on maturity. It said that, to the contrary, the complainant had signed a declaration with a number of standard risk warnings.

In his deliberations, the Arbiter observed the following:

1. At the time the complainants established an investment relationship with the provider, a confidential client fact find was drawn up by the provider. It showed the complainants' risk attitude as "medium". Two subsequent updates to the fact find maintained such risk category.

2. The bond which the complainants were offered in a bid to recoup their lost capital was of a higher risk category than that which they were prepared to accept, besides not being consistent with their overall risk attitude. The bond that had been advised to the complainants had a rating of CCC-, an indication of higher risk.

3. The complainants had clearly insisted that their risk attitude was between low to medium. They had relied on the provider's advice because it was in a much better position to decide on the best way to invest. They had relied on its advice in view of the fact that they were told that in two years' time, the bond would pay in full on maturity and recoup their lost capital.

4. Recommending a speculative bond to the complainants was certainly not in their best interest.

5. Their previous investments were not sufficient for the complainants to have the necessary knowledge and experience to understand the risks associated with such a bond.

6. The complainants, who had both reached pensionable age, could ill afford to lose their capital.

The complaint was upheld and the Arbiter ordered that the complainants were to be reinstated to their financial position prior to investing in the same bond, less any interest they might had received in the interim. The decision has been appealed.

Investment in a subordinated bond by a retail and inexperienced investor (025/2017)

Complaint upheld

Subordinated bond, promotion and selling, service provider's obligations, assessment

The complainants submitted that the service provider did not honour its contractual obligations. They claimed not to be professional investors and were not informed by the service provider at contractual state that they could forfeit the capital invested.

The service provider stated that:

a. The company's representative did not act in his personal name and should be declared non-suited.

b. The case was statute-barred according to law.

c. The company acted only as an intermediary and was not responsible for the losses sustained by the complainant.

The Arbiter held that:

1. The service provider's representative did not act in his personal capacity and the complainants were only complaining against the service provider as an investment company and consequently the representative was not party to the case.

2. The case was not statute-barred because the service provider had failed to prove the plea of prescription. The plea of prescription raised related to fortuous liability whereas the case in question emanated from contractual liability as confirmed by constant jurisprudence of Maltese Courts.

3. The service provider did not act in an intermediary capacity, but as a licence holder of the MFSA. It had to abide by specific rules and regulations and if it resulted to the Arbiter that it did not comply,

it should carry its own legal responsibilities. It resulted to the Arbiter that the service provider had acted as principal.

4. As to the merits of the case, the Arbiter concluded that the service provider had given advice to the complainants to invest in a subordinated bond issued by a foreign bank which had already received a substantial bail out.

The complainants stated in evidence that the service provider had promised them a guaranteed return of 6.25% per annum on their investment. It had assured them that the investment was safe so much so that the service provider's representative had himself invested in it.

They also contended that they were asked to sign an Experienced Investor Declaration Form when in reality they were not experienced in investments. They were asked to sign these documents without an explanation. Later they realised that, in signing these documents, they had been misled by the service provider.

They were not aware that the service offered was on a 'promotion and selling' basis as they sought the services of a financial services provider to be given adequate advice.

The service provider submitted that the complainants had wanted an investment rendering a good return. Its representative had explained that he was not giving them advice but was only 'promoting and selling' the investment. The complainants had chosen themselves the subordinated bond after he explained its characteristics and the risks involved. He did not exclude the fact that he might have told them that he himself had invested in the bond.

The Arbiter concluded that:

1. The complainants' version of facts was more credible than that of the service provider

2. That the bank issuing the subordinated bond had, for three years prior to its nationalisation, been scrutinised by various rating agencies which had stated that the subordinated bonds that were being offered were not guaranteed and could fail. The subordinated bonds ranked last in case of liquidation and in the list of creditors these bonds ranked after senior creditors and the government. Consequently, these bonds were not appropriate and suitable to all investors. The risk in the bonds in question was not hypothetical but real.

The Arbiter also observed that the bond should not have been sold on a 'promotion and selling' basis because the complainants depended on the service provider's advice being retail and inexperienced clients.

Since the bond was not appropriate to the complainants, the Arbiter ordered the service provider to compensate the complainants for their losses on the investment.
The case was not appealed.

Investment suitable to wholesale and sophisticated investors sold to retail clients (473/2016)

Complaint upheld

Inherent risks in a product, inadequate suitability assessment, improper or lack of due diligence, fiduciary obligations, mis-selling of an investment, protection of retail clients

Complainant stated *inter alia* in her complaint that:

a. The service provider did not act in her best interests and did not observe its fiduciary obligations.

b. It offered her a high risk and complex product suitable which was not suitable to her.

c. She was asked by the service provider's representative to sign documents which were only intended to exonerate the service provider from its contractual obligations, apart from the fact that they had not been explained to her.

d. The service provider did not honour its contractual obligations when it failed to disclose the inherent risks related to the product; when it was contractually negligent and was in fact mis-selling the investment.

e. Since the investment product was not in line with her knowledge and experience, she was not in a position to freely decide to make such an investment.

The service provider pleaded that:

a. It was not the legitimate party to the case.

b. The action had been prescribed according to law.

c. There was incompatibility in the complaint which should be rejected.

d. The service provider did not manage the investment and acted only in an intermediary capacity.

e. It acted according to the relevant laws and observed its contractual obligations and allegations of mis-selling were unfounded.

In his deliberations the Arbiter concluded that:

1. The case was not prescribed according to law quoting case law in this respect.

2. The service provider was the legitimate party since it had entered into a contract with the complainant and therefore a juridical relationship existed between the parties.

3. The complainant satisfied the requites of the law and there was nothing null about it. The law establishing the Office of the Arbiter for Financial Services made it amply clear that proceedings were informal, and the Arbiter should look in the substantive merits of the case rather than consider formalities. Moreover, the law did not contemplate nullity of complaints on the basis of lack of formality.

4. The service provider as a licensed service provider had acted as a principal and not as an intermediary. The Arbiter stated that service providers in financial services were regulated by *ad hoc* rules and regulations which were to be scrupulously observed.

As to the merits of the case, the Arbiter concluded that:

1. An investment suitable only to wholesale and sophisticated investors in another jurisdiction should not have been sold in Malta to retail clients which could have been afforded more adequate protection.

2. The service provider failed to conduct a proper due diligence exercise before offering the product to retail investors because it was evident from public pronouncements made by the investment company that the company had liquidity issues and the fund was suspending payments to investors prior to the sale of the investment to the complainant.

3. The complainant was not an experienced investor and she had only a few bank deposits and a life insurance policy. Since the product was sold on an advisory basis, the service provider was obliged to make an adequate assessment of suitability.

4. From the facts of the case it resulted to the Arbiter that the complainant did not meet the requisites of the suitability test under MiFID and local legislation implementing these rules.

5. The service provider did not honour its fiduciary obligations

6. The documents the complainant was asked to sign were not in plain language as stipulated in art. 47 of the Consumer Affairs Act.

7. The service provider did not act in good faith when offering these documents for the signature of the complainant. Moreover, it did not act honestly, fairly and professionally and in accordance with the best interest of the client and failed to observe rules and regulations aimed at protecting consumer rights in financial services.

8. The product had been mis-sold to the complainant.

The Arbiter ordered the service provider to reinstate the complainant to her financial position prior to the investment, deducting any income the complainant could have received on the investment together with legal interest from the date of decision till the effective payment date.

The decision was not appealed.

Mis-selling of a complex investment product (448/2016)

Complaint upheld

Re-investment, investment advice, obligations of the provider, legitimate party, pooled investment in traded endowment policies, suitability/appropriateness test, knowledge and experience

The complainants claimed that in 2008, the service provider had contacted them and insisted that they ought to sell an investment in a fund which they had inherited from their father, and re-invest the proceeds in another investment, which was superior and more secure.

A meeting was held at their house, during which the provider's official had made them aware that it was likely that, part of the units in their inherited fund, were to be deducted for some technical reason and that it would be best to redeem the investment for the proceeds to be invested in another investment product. The complainants claimed that they were apprehensive at first and asked whether the proceeds could be invested in government bonds, with which they were more familiar. The provider's official continued to insist and told them that, as the title of the investment product indicated, the investment was secured.

The complainants accepted the advice they had been given.

Two years after, the investment they had been advised to purchase was suspended and its management was taken over by an administrator.

In their complaint, they claimed that the provider had failed to carry out its obligations when it had contracted with them and had caused them substantial harm in capital losses and potential earnings.

The provider claimed that it was not the legitimate party to the case and that the foreign company which issued the product should respond to the complainant's claims.

As provider, it was only tasked with furnishing financial services as an intermediary between itself and the investor. It further claimed that the losses suffered by the complainants were the result of the 2008 financial turmoil.

In his deliberations, the Arbiter rejected the plea raised by the provider. The service provider was indeed the legitimate party, and the documentation submitted unequivocally identified it as offering investment advice to the complainants and investing their funds.

On merits, the Arbiter further established that:

1. The product invested in a pool of traded life endowment insurance policies. The product brochure emphasised a yearly return of 7.5% and 7% for sterling and euro-denominated investments respectively over a five-year period. The investment was considered to form part of investments which are termed as "asset-backed securities".

2. The product had failed, among other aspects, as the analysis of the life expectancy and mortality rates of the underlying lives assured was incorrect. The longer the life assured's longevity, the further premium would be required to be paid in the life policy, as failure to do so would lead to a loss in value of the policy. This can create liquidity pressure on the fund which is sustaining the premia payable into these policies. This was a risk that many analysts failed to take into proper account, with dire consequences on such products.

3. If analysts failed to take into account such technical aspects, it was hardly expected of retail investors to do so themselves, apart from the fact that the name and description of the product gave the impression that the investment was secure and without risks, or had limited risks.

4. The risks as described in the documentation would have given the impression that they were not much different from other investments that were being offered to other investors at the time. However, the product was far from low risk. It was a medium-to-high risk investment not only because of the nature of the product – bonds which invest in life insurance policies – but even the structure itself rendered the product risky and unsuitable for retail investors.

5. The complainant said that, although he had signed a number of documents, he did not recall seeing any form with ticked boxes on it. He said that the boxes on one of the forms had been marked after he had signed the form. The person who had sold the product was not called as witness and the provider's compliance official was only able to comment on the basis of the documentation held on file.

6. Although MIFID obliged providers to compile an appropriateness or a suitability test, the provider did not submit any documentation which attests that either of the two tests had been conducted prior to the sale of the product. As advice was provided, a suitability test should have been conducted. The complainant met neither of the three criteria that would have rendered such product suitable for the complainant prior to advice: investment objectives, knowledge and experience, as well as financial bearability.

The product had been mis-sold and the complainants ought to be placed to the original financial position they were in prior to acquiring the investment.

The complaint was therefore upheld. The decision has been appealed.

Four separate transactions in the same bond (124/2017)

Complaint rejected

Multiple transactions, restructuring of a bond, advice, execution only, knowledge and experience, corporate restructuring, risks

The complaint related to an investment in a bond which carried an annual coupon interest rate of 8.5% and had to mature on 18 March 2012.

The complainants invested 25,000 units in this bond over four transactions at different intervals between 2005 and 2007. It transpired that a few days before the bond had to mature, the bond issuer announced that it would not be able to honour its obligations to bondholders. In August 2016, bondholders were informed that the bonds would be restructured and in lieu of their holdings, investors would be given a one-off cash payment and new shares quoted on a major stock exchange.

The complainants claimed the following:

a. They had invested on the advice of the product provider who never drew their attention not to purchase additional bonds in the same holding. They claimed that the provider had always told them that these bonds were suitable and they need not worry about their performance and standing.

b. They received a partial amount of their total outlay in these bonds and interest. The complainants were claiming their money back, with interest.

The provider countered with the following:

a. At no time were the complainants pressured into investing. The choice of bonds with high interest was entirely the complainants' decision.

b. The complainants had always been informed of the risks inherent in the bonds, which they had experienced over several years of investing in similar investments with the same provider. The professional relationship with the provider started in 1996, going back around 20 years. Over those years, the complainants had invested in bonds which carried an element of risk at par to the bonds which were subject to the complaint. As an example, the provider stated that the complainants had invested in sovereign bonds issued by Ecuador, Argentina, Columbia, Brazil, Venezuela as well as large corporations paying coupon interest in excess of 9%. It was unfortunate for the complainants not to take cognisance of these various bonds, and the interest received over the years.

c. Around the time the bond had to mature, the complainants were contacted by the provider and were told to exit the investment as the price had fallen to around 60%.

d. The firm had no control over the restructuring of the bonds.

In his deliberations, the Arbiter concluded that:

1. Investors in this bond had been kept informed of developments relating to the bond's restructuring. The provider had written to all bondholders in March 2012, and subsequently in July and October of that same year. A further announcement was issued in August 2016 in which bondholders were informed of the restructuring.

2. The fact finding documentation indicated that the complainants had an "aggressive" level of risk tolerance and that their primary objective of investing was capital growth, including equity investments, emerging market instruments and re-investment of income from bonds.

3. The complainants carried out further bond transactions – with coupons ranging from 4.75% to 13.625% - following the investment which is subject to the complaint.

4. During evidence, the provider's official responsible for their account had confirmed that it was he who had originally recommended to the complainants to invest in this bond. However, he had disagreed with the complainants when they subsequently asked to invest more funds in the same bond.

5. Towards the end of 2011, the provider's official met the complainants for more than one hour during which he had made them aware that, although they had no information that the issuer would not be honouring its obligations, the bond's performance was weak and he recommended that they exit the investment, and the proceeds be re-invested. The complainants rejected the provider's suggestion. The provider confirmed that that was not the first time that the complainants had rejected its advice.

6. The exchange of bonds for cash and shares without the investors' approval could not be attributed to the provider as this was not in its control.

7. Although the first acquisition was recorded as being carried out on execution only, it was more likely that advice had been given by the provider in regard to this investment. As regards the subsequent investments, the Arbiter was of the view that these were done at the initiative of the complainants and contrary to the provider's advice.

8. Evidence was not convincing enough to determine that the complainants were not understanding the risks associated with the investments given that they held various other investments of a similar risk profile.

The complaint was rejected. The decision has not been appealed.

Recovery of investment funds (389/2016)

Complaint upheld

Investment advice, property loan fund, eligibility criteria for investors, complex investment, acting in the best interest of the client

The complainant lamented the loss of an investment in a fund that invested in property which, it was contended, had been undertaken on the provider's assurance that the invested capital was guaranteed.

The complainant was therefore claiming the full reimbursement of the invested capital as well as the unpaid interest.

On its part, the provider contended that:

a. The document titled "Client ID Query" showed that the investment in question was not in the sole name of the complainant but in joint names with his wife.

b. The complainant submitted his written complaint to the provider after the start of these proceedings without allowing it the opportunity to respond within the fifteen-day period allowed by the complainant.

c. There was no juridical relationship between the provider and the complainant.

d. Other than the reimbursement request, the complaint itself was unclear and did not explain the reason(s) why the provider should reimburse the amount requested.

e. The provider acted merely as an intermediary in the investment concerned; hence, it had no control over its subsequent outcome.

In his deliberations, the Arbiter concluded that:

1. The "Purchase Contract Note" evidences the fact that the investment was also in the name of the complainant's wife, who was an "eligible customer" in terms of the relevant legislation.

2. The written complaint to the provider was submitted by letter dated 29 July 2016 whereas the Office of the Arbiter accepted the complaint on 13 October 2016; hence, the provider had ample time to react.

3. The complaint clearly identified the provider as solely responsible for the reimbursement requested.

4. The complainant had clearly explained the insistence that the investment product should carry a capital guarantee; this had triggered the complaint, as the said product was unsuitable to client's requirements.

5. The provider had not informed the complainant that it was acting as an intermediary; nevertheless, even so, this did not signify that it was absolved from any responsibility. When providing advice and selling an investment product, a provider would be acting as principal in its relationship with a customer.

The Arbiter further found that:

1. When sold to the complainant, the investment product was already facing liquidity problems.

2. The investment risk section of the product's "Information Memorandum" stated that an investor looking for certainty and control over its assets' investment should not invest in the fund; and this because the investment manager could participate in non-conventional investments. It further stated that the capital was not guaranteed.

3. The investment product in question was essentially a property loan fund; it was therefore exposed to liquidity problems. Three commercial loans from the Fund's asset portfolio (16% of its assets) were in default even before the product was sold to the complainant.

4. The investment, which was registered in a non-EU country, was not regulated by a financial regulator.

5. The eligibility criteria for investors residing in such non-EU country were comparatively more onerous than for non-residents in that they had to provide certification of sophisticated investor status. The fact that non-residents had no such requirement further augmented the responsibility of the provider vis-à-vis its client.

6. The provider had not given sufficient consideration to the foregoing aspects in its assessment of the product; it had not carried out a proper due diligence exercise about it. Rather, it opted to rely on the advice given to it by an external party whose primary interest was in its sale.

7. The product was a complex investment instrument. The complainant was an inexperienced retail client whose existing investments were mainly in bank deposits.

8. The documents submitted by the provider in its defence cast serious doubt on its version of the case. There were also inconsistencies in the testimony given by its representative.

9. The provider needlessly elicited the signature of the complainant to the Experienced Investor Declaration Form; this was intended as a release from its responsibilities. The complainant could not have understood the implications of such signature since the document was in fine print and replete with technical terminology.

In the light of the foregoing, the Arbiter felt that the provider had not acted honestly, fairly and professionally in the best interests of its client.

He therefore ordered the provider to pay the complainant the original sum invested with any legal interest due. The decision was not appealed.

Investment in equity index-linked investments (456/2016)

Complaint rejected

Investment advice, equity index-linked notes, complex investments, risk appetite, structured products

The complainants, a husband and wife (aged 62 and 53 years respectively), complained that their financial services provider did not act in their best interest and breached fiduciary obligations to which it was subject when, as retail clients, it provided them with advice to invest in high risk equity index linked notes, all complex investments, during a span of over five years between 2009 and 2015. They stated that such investments were intended for professional clients and not meant for distribution to retail clients.

They claimed that the provider had acted with gross negligence and committed mis-selling as the products were not in line with their personal circumstances, financial objectives and low to medium risk attitude with the financial risks being beyond their absorption capacity. As remedy, they asked to be placed back in the same financial position they were in prior to investment.

On its part, the provider contended that any losses suffered by the complainants were beyond its control and were exclusively the result of market, credit or fraud risk.

The Arbiter observed the following:

1. 29 investments were undertaken between November 2009 and August 2015. Of these, 26 were in complex equity index linked securities, two complex and one non-complex fund.

2. The Client Confidential Fact Find indicated that the complainants wished to invest £41,000 for five years as a one-off investment for capital growth purposes. Their attitude to risk was marked "Low/Medium".

3. Over the course of the relationship, it transpired that the husband exchanged various communication with the provider in which he had clearly and consistently highlighted the low risk attitude to investments (as compared to the low to medium risk indicated on the Fact Find). On the basis of the evidence provided during the hearing as well as the exchanges of emails submitted, the Arbiter concluded that the complainants wanted to invest in structured products with capital protection and were conscious of the nature of these investments (as compared to others).

4. Evidence suggested that the husband (who was also acting on behalf of the wife), actively engaged in discussions relating to these products and on occasions he had put forward suggestions to the provider for investing in specific structured products albeit with different features.

5. Additionally, the complainants pursued an investment strategy in complex structured products between 2013 and 2015, notwithstanding losses sustained on the same investments in previous years and their awareness of potential losses on such investments.

The complaint was rejected. The decision has been appealed.

La Valette Multi Manager Property Fund

Decisions delivered in respect of a collective complaint (28/2016) and 45 individual complaints

The Arbiter delivered a decision in regard to a collective complaint lodged by 400 complainants - former investors in the La Valette Multi Manager Property Fund - against La Valette Funds SICAV plc (SICAV), Valletta Fund Management Limited (now named BOV Asset Management Limited) and Bank of Valletta plc (the bank), hereinafter collectively referred to as "the financial providers". The Arbiter also delivered 45 other decisions which were submitted by complainants individually in relation to the same fund.

1. Background

The La Valette Multi Management Property Fund (the fund) was setup in September 2005 and authorised by the MFSA, the financial regulator, as a Professional Investor Fund available to investors qualifying as Experienced Investors. The fund was a sub-fund of the La Valette Funds SICAV plc. Other than a prospectus for the SICAV, the terms applicable to the sub-fund were issued in a Supplementary Prospectus, which was subsequently updated a few times during the course of the fund's existence.

Valletta Fund Management Limited was the fund manager and Bank of Valletta plc (the bank) was the fund's custodian. The bank was also the intermediary for this fund.

The fund, which was sold on a large scale including from bank branches, was offered not only to professional but also to retail investors.

The aim of the fund was to generate income and capital appreciation for investors by investing in other property funds.

According to the Supplementary Prospectus, there were a number of restrictions in the manner the fund had to be invested, including this restriction: "the limit on the level of gearing that the fund's underlying real estate property funds may be exposed to is of a maximum of 100% of their respective net assets".

In August 2008, the fund was suspended and remained so until August 2010 when investors were issued two kinds of shares in the same fund: "Main Pool" and "Side Pocket" shares. The "Main Pool" comprised assets that had maintained a sufficient level of liquidity and for which the fund's directors were able to determine a credible value. The "Side Pocket" included funds that had their redemptions suspended or deferred, or had their net asset determination suspended.

In the meantime, a number of allegations were levelled not only relating to the manner the fund had been invested, in breach of the Supplementary Prospectus, but also on the way the fund had been sold to investors. The financial regulator announced that it was investigating these allegations.

In an effort by the bank to terminate the contentious issues that had been raised in relation to the fund, in May 2011, the bank made an Offer to the fund's investors to purchase their holdings at €0.75 per share while at the same time accepting to renounce all of their litigious rights (present and future) against the bank and the fund's functionaries (including the financial providers' directors and employees).

On 24 June 2011, six days before the lapse of the Offer period, the MFSA announced its conclusions of two parallel investigations into the role of the fund manager and the custodian in connection with the fund's investment restrictions and its monitoring. In its reports, the MFSA concluded that both the bank and the fund manager had committed a number of breaches. On the bank's role as custodian, the MFSA concluded that it (the bank) had erroneously applied the investment restriction in the Supplementary Prospectus and also failed to monitor the fund's adherence to such restriction. The bank was also found not to have adhered to its fiduciary obligations and failed to act in the best interest of the fund and the investors. The same conclusions were drawn up by the regulator in a parallel report which investigated the fund manager's compliance obligations to the same investment restriction. Although the bank and the fund manager appealed the MFSA's conclusions, such appeals were later withdrawn whilst rejecting any legal responsibility.

The Arbiter said that the terms of the Offer were not acceptable for the MFSA so much so that on 28 June 2011, two days before the lapse of the Offer period, the MFSA issued the bank with a directive stating that the acceptance of the Offer had to be without prejudice to any rights investors might have had for compensation or, alternatively, to be placed in the same financial position


RISK ?

prior to their investment in the fund. An appeal by the bank against the directive was later withdrawn.

One year following this directive, on 1 June 2012, the MFSA informed the bank that a professional firm independent of the financial provider would be appointed to, among other aspects, classify investors between those that qualify as experienced investors and others that are not, with the intention that whoever is found not to be experienced in terms of the Experienced Investor Criteria would receive compensation from the bank.

Mazars, an audit and consultancy firm, was appointed to carry out this file review at the bank and issue a final report, which it did on 21 January 2013. The MFSA passed on a list of investors to the bank that, in terms of this report, were eligible to receive compensation equivalent to €0.25 for each share. Although the bank had emphasised in its Offer document that its offer to purchase shareholders' units (at €0.75 per share) was in full and final settlement, it otherwise still affected an additional payment (at €0.25 per share) to a number of investors who Mazars established were eligible for such compensation.

However, Mazars also established that a number of investors in the fund were deemed to be experienced or that their transaction fell under the Execution Only basis category. These investors were therefore found to be ineligible for any additional compensation.

2. The collective complaint lodged by 400 complainants

The Arbiter gave a very extensive decision dealing with the legal issues raised and an empirical analysis of the underlying investments mentioned in the complaint. The parties filed 31 volumes of documents which had to be analysed by the Arbiter.

The basis of the complaint

The investors claimed that Bank of Valletta plc, as the fund's custodian, had to ensure – through the Offering Documents and Financial Statements - that the underlying funds would not be permitted to seek debt above the limit established in the Supplementary Prospectus. They claimed that although the fund's assets had been invested in breach of the Supplementary Prospectus, the custodian issued clean annual custodian reports and which expressly confirmed compliance with the Supplementary Prospectus. It claimed that, since 2006, the bank had misled investors and this in breach of the law and regulations. As a result of the breaches and violations attributable to the SICAV, the fund manager and the bank, investors had effectively been offered shares in a fund whose profile was totally different from that in which they had actually invested, and as a result, they had suffered losses.

The complainants also made reference to the Offer which the bank made to the fund's shareholders in May 2011. They claimed that the Offer had been priced arbitrarily and inequitably as take up of such an offer was in full and final settlement of any claims that such fund shareholders may have had in regard to the fund's functionaries. The complainants claimed that at the time the offer had been made, the bank had already been made aware by the MFSA, but without the investors' knowledge, that it had concluded its report on the breach of the fund's investment restrictions and that the regulator had found against the bank and the functionaries of the fund. The investors claimed that such findings were withheld from the public by the fund's functionaries while at the same time, the bank was continuously and actively encouraging investors to take up the bank's Offer.

The legal aspects

The bank and the other functionaries of the fund claimed that the Arbiter for Financial Services did not have the competence in terms of law neither to decide on the validity of the contract that had been transacted between the fund shareholders and the bank, nor on the binding nature of the contract to the transaction.

The Arbiter rejected the providers' claim that he lacked competence to look into the complaint. He said that, in terms of Chapter 555 of the Laws of Malta which established the Arbiter for Financial Services, as long as the complaint was being made by "eligible customers" against "financial services providers", as defined, there was nothing to preclude him from looking into the case.

The Arbiter then dealt with the plea of nullity wherein the providers claimed that the complaint could not be entertained as the parties – the investors and the financial providers – had entered into a binding contract in terms of which, they had settled, fully and finally, any present and future claims against the bank. The binding contract had the effect of a *res judicata* judgement between the parties, the financial providers claimed. The complainants were

neither contesting the validity of the contract signed by the parties nor were they asking for the contract to be rescinded. The complainants emphasised that what was illegal were a number of specific clauses inserted by the financial providers in the Offer document which in the circumstances constituted prohibited clauses and unjust terms pursuant to the Consumer Affairs Act, and therefore did not bind the consumer.

The Arbiter observed that the legal interpretation the providers were giving was that based solely on one provision of the Civil Code. However, he said, the Court of Appeal in Malta had already observed that the legal maxim of *pacta sunt servanda* was based on the principle that both parties were at liberty to enter into a contract in full liberty to negotiate the terms of the agreement, and that the agreement once reached had the effect of law for all intents and purposes. However, both at European and at national level, the legislators have become more conscious of consumer rights and that special legislation such as the Consumer Affairs Act and the specific legal norms relating to financial services had precedence over the Civil Code. This was in line with the maxim that *lex specialis derogat lex generalis*, a principle which has long been established in Maltese jurisprudence.

The Arbiter reasoned that the offer made by the financial providers was made in exceptional circumstances, at a time when the investors were unable to realise their investment for a very long time as the fund had been suspended by the service providers between 2008 and 2010. He observed that the majority of the investors were retail clients, elderly people that could ill afford to wait to get their money back as a result of protracted litigation.

When the providers made the Offer, the Bank's chairman had sent a letter to the investors over-emphasizing the fact that, if they did not accept the offer, they could face lengthy litigation in Court. The way the Offer was made did not leave the investors with a free choice to negotiate and was made on a ''take it or leave it'' basis.

The complainants were not in a position to negotiate and feared that, if they did not accept the offer, they would end up losing all their investment.

The Arbiter observed that the terms of the Offer agreement were dependant on a number of conditions that were not only spread throughout the whole document but also prominently placed on the front page of the Offer document. Such provisions were meant to bring finality to any dispute the investors might have had against the bank and its functionaries whereby the investor would surrender all legal and litigious rights to the bank in full and final settlement of any claims that such investors may have had in connection with the fund and its management. The Arbiter observed that these clauses were drawn up by and for the providers to be absolved of all their responsibilities, present and future.

The Arbiter held the view that in terms of the Consumer Affairs Act, clauses that have the effect of "excluding or limiting the liability of a trader by reason of his own fraud or gross negligence or that of his employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract" were unjust. Although the Arbiter had no evidence to suggest that any type of fraud had been committed, the providers were aware that they were being investigated in regard to their non-observance of obligations that arose from the Supplementary Prospectus, and which the MFSA had established in its reports against the bank and the fund manager released a few days before the Offer closure.

Rather than retracting the Offer as soon as they received the MFSA reports, the providers carried on encouraging its uptake.

The Arbiter observed that the investors were confronted with a set of conditions and clauses that had been pre-established by the providers without any opportunity to negotiate.

The Arbiter concluded that as these clauses were unlawful and therefore without effect, it was being deemed that no transaction occurred between the investors and the providers that would have had the effect of excluding the Arbiter from investigating the merits of the case.

The merits of the case

In their complaint, the investors claimed that they had suffered losses to their capital as a result of the manner the fund manager had invested the fund's underlying assets in breach of an Investment Restriction (IR(v)) in the Supplementary Prospectus that stated the following "the limit on the level of gearing that the fund's underlying real estate property funds may be exposed to is of a maximum of 100% of their respective net assets".

The complainants claimed that, as a result of the financial providers' shortcoming and failure to adhere to the investment restrictions in the Supplementary

Prospectus, the investors were informed of the losses in the sub-funds when it was too late to do anything. The providers contended that there were no breaches of the investment restrictions.

The issue boiled down to the interpretation of the term "net assets", which the financial regulator and the complainants were interpreting differently from that of the financial providers.

After reviewing the Supplementary Prospectus and analysing what the MFSA and the financial providers had to say about their interpretation to IR(v) of the Supplementary Prospectus, the Arbiter held the view that the correct interpretation to the term "net assets" could not have been interpreted in any other manner except "total assets less total liabilities". He said that this was consistent with the ordinary interpretation of the term "net assets" and how the public would have ordinarily interpreted it. The Arbiter said that this definition was also consistent with the way it had been interpreted and reported in the financial statements of the SICAV. This, too, was the position that the MFSA had taken in its 24 June 2011 report. He said that although there were divergences in the manner "net assets" was being interpreted by the regulator and the service providers, none of the parties had cast any doubt on the manner in which the investigation carried out by the MFSA had been conducted or that whoever had carried out the investigation lacked competence. He said that the MFSA had the necessary powers at law to conduct such an investigation and this too went unchallenged.

The Arbiter also carried out an in-depth investigation into each and every sub-fund which the investors claimed had been in breach of IR(v).

In his conclusion, the Arbiter established that the SICAV fell short of taking the necessary steps and ensure that the investors held all the information as to the performance of their investments.

The Arbiter quoted from the MFSA's report on the providers' breaches to the investment restrictions. He expressed his agreement with the conclusions in the MFSA's report, which he said was drawn up by independent experts in the field and had been issued after giving the providers the opportunity to express their views.

The Arbiter further stated that the contractual relationship in financial services arises from the fiduciary relationship that a service provider constructs when a client entrusts it with its savings after years of hard work. The service provider had breached such fiduciary obligations.

The providers raised investors' expectations when they marketed the product as a sound investment in property. The Arbiter remarked that the majority of investors were elderly and had expectations of investing securely with an operator that was not only better informed but bound to follow self-imposed restrictions, as provided in the Supplementary Prospectus.

On this basis, the Arbiter determined that the conduct of the providers was not fair, equitable and reasonable in the particular circumstances and substantive merits of the case and had failed to reach the legitimate expectations of the investors.

He determined that all the financial providers in solidum should pay investors compensation for the losses they had suffered, and in accordance with a schedule that was annexed to and forming part of the decision. Legal interest from the date when the investors lodged their complaint until the date of effective payment was to be payable.

Finally, the Arbiter called on the providers to be cognisant of the many elderly investors in the fund who had been waiting for payment for a number of years. He called on the providers to be mindful of their social responsibilities, as well as to their responsibility to protect the integrity and reputation of the financial institutions they operate.

The Arbiter invited the service providers to take stock of the decision and bring finality to this long outstanding issue.

3. 45 individual complaints

In 2018, the Arbiter issued 45 decisions relating to cases lodged individually by investors in the La Vallette Multi Manager Property Fund against the financial providers. What differs these cases from the decision referred to above is the basis or the reason given by the complainants.

Whereas in the case referred to above, the reason which the 400 claimants were complaining about related to the way the fund had been managed by the fund manager in breach of the Supplementary Prospectus, the basis for the individual complaints was the manner the fund had been sold to them. In the majority of the cases, the complainants claimed that they should not have been considered

as "experienced investors" and therefore should not have been excluded from receiving the additional compensation that was paid by the bank following the extensive file review carried out by Mazars (see above) on a directive issued by the financial regulator.

In this section, we summarise the legal aspects which the Arbiter dealt with in response to a number of pleas and objections made by the provider or providers. Many of the legal aspects were common in all the decisions. What differentiates one decision from the other is the merits of the case and in the summary below, a brief overview of a selection of decisions is provided.

The legal aspects

Jurisdiction

The Arbiter rejected the plea that he did not have competence to look into the cases or that the case was null (refer to prior section).

Prescription

The Arbiter quoted from a number of cases delivered by the Courts in Malta and retained that when damages arise out of violations to contractual obligations, the applicable prescriptive period is five rather than two years. He said that the bank had entered into a contractual relationship when it sold the product to the investor and their plea of prescription could only be relevant in tort actions. This was the constant interpretation of the Maltese Courts.

Merits

The sale process

Investors who invested in this fund were asked to compile an Application Form as well as an Experienced Investor Declaration Form. In terms of the Supplementary Prospectus, no application for this investment had to be accepted without a properly drawn up application form.

For an investor to be eligible to invest in the fund, it had to satisfy the definition of an 'experienced investor' in terms of one of three specific criteria. These three criteria were specifically mentioned in both the definition of experienced investor in the Supplementary Prospectus, Appendix V of the Supplementary prospectus and the Experienced Investor Declaration Form.

The Arbiter referred to the Experienced Investor Declaration Form and the MFSA's report on the sales practices that the bank adopted during the fund's sale process. He said that the MFSA had made it amply clear that the fund could not have been sold to everyone as "[i]ts features, including the relevant risks, made this an unsuitable product for unsophisticated retail investors or investors having a cautious risk profile".

The Arbiter said that by signing the declaration form, which was a standard form, the investor had not been rendered 'experienced' for the purposes of investing in this fund. He said that this also follows the MFSA's report when it stated that during its review, it found that in various instances, the bank's advisers "did not take reasonable steps to ensure that the said investors were indeed experienced investors before advising them to invest in the Fund, and that the Fund was suitable for these clients".

The Arbiter said that, whether the sale was concluded against advice or as execution only (i.e. without advice), the bank was still obliged to exercise prudence and diligence in regard to the person acquiring the said fund, and this on the basis of the specific eligibility criteria that were applicable to those investing in the fund.

For each case that the Arbiter was asked to determine, he went through all the documentation presented as well as statements made by the provider and investor under oath to determine whether, on the basis of the evidence as presented, the investor had the expertise, experience and knowledge to invest in the said Fund and whether it had been deemed as an experienced investor simply because it had been provided with the declaration form for signature.

"Experienced Investor" and the "Experienced Investor Declaration Form"

The Supplementary Prospectus required that: "Investment in the Fund is only suitable for investors who meet the Experienced Investor criteria as defined under the section 'Definitions'".

The Arbiter noted that the Experienced Investor Declaration Form had one glaring omission that

in practice might not have been given the requisite importance or had probably been ignored altogether.

The Arbiter noted that although the Form includes the three criteria, it omitted the first paragraph to the definition of the term which states "Experienced investors are considered as persons having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved". The Arbiter noted that not only was this first sentence left out completely from the form, but that no evidence had been produced that this aspect had been discussed or explained before the investment.

Eligibility

A number of investors who complained to the Arbiter claimed that, during the file review conducted by Mazars, they had been declared (by the firm) as not being eligible for additional compensation either because the purchase transaction fell into the "execution only" category or the investor had met the third eligibility criterion which required that a person must have transacted in investments for at least USD50,000 (or equivalent) within a five-year span preceding the date of investing in the fund.

In a number of cases, the Arbiter determined that the bank failed to act "with due skill, care and diligence" in terms of the financial regulator's rules and that the bank failed to put forward convincing evidence that it had implemented such over-riding obligations in regard to the complainants, considering the various shortcomings mentioned in the complaint.

4. Sample cases

The following summary of four cases is intended to give a general overview of the arguments on which the Arbiter had based his decisions when deliberating on the individual complaints.

Execution only transaction – documentation not properly compiled

Complaint upheld

The investor was 57 years old when he invested in the fund. He ran a vehicle body parts garage with a maximum income of around €16,000. He had primary school education. In his complaint, the investor declared that he had been encouraged to invest in the fund during one of his visits to the branch to affect some deposits. He claims that he had asked the bank staff about the investment's security and the reply was that investing in property was always guaranteed and that property never fails. He had previously invested in Government bonds and that his investment had always been offered to him by the same bank on its advice.

The Arbiter observed that although the Experienced Investor Declaration Form was signed by the investor, none of the three eligibility criteria were identified and other than the signature, the form was blank. The Arbiter observed that this was a grave mistake on the part of the bank and contrary to the requirements of the Supplementary Prospectus.

The Arbiter further observed that the transaction affected by the investor was done on 'execution only' basis. However, there was no basis whatsoever to deem the investor as having the expertise, experience and knowledge to be in a position to make his own investment decision and understand the risks involved.

The Arbiter said that, on the basis of the evidence provided, the investor was not informed in a clear and unequivocal manner that his signature would have attested that he had the qualities that would have rendered him in a position to understand the risks involved before entering into the transaction. The Arbiter said that Mazars' categorisation of the transaction as 'execution only' was limited and insufficient for the purposes of reviewing the context and reason of the complaint.

The Arbiter ordered the bank to place the investor into the same financial position he enjoyed prior to investing in the fund, taking account of the amount he had received on acceptance of the Offer and any interest he may have derived from the investment.

The investor was found to be experienced

Complaint rejected

The investor claimed that he had been informed by the bank that he did not qualify for additional compensation as he was deemed to be an experienced investor. The investor was 72 years old when he invested for the first time in the fund. He had a secondary level of education, and was bi-lingual. He said that it was the bank which took

care of his investments and he always followed its advice. He had made other investments with the provider. He claimed that he had not been given any brochures or a prospectus of the fund, and was not given a copy of what he was asked to sign at the time of investment.

As part of the proceedings, the official who was responsible for the complainant's portfolio was asked to testify. He confirmed that it was him who advised the complainant about the fund. He also confirmed that the complainant had a wide range of investments, a balanced risk profile of the medium risk type. He said that the complainant used to ask a lot of questions and used to meet up regularly with him. The official said that he had told the investor that the fund did not have guaranteed capital. He confirmed that when he noticed a decline in the fund's performance, it was he who had suggested to the complainant to dispose of some of his investment. He did so twice, which funds were then re-invested in other funds managed by the same fund manager. He claimed that the investment in the fund had constituted around 4% of the entire investment portfolio which the complainant held with the same bank.

On the basis of the evidence provided, the Arbiter concluded that not only did the complainant meet the third eligibility criterion prior to investing in the fund, but that he had the necessary expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved, an important component of the "experienced investor" definition in the prospectus.

The complaint was rejected.

Investors were found not to be experienced

Complaint upheld

The investors, a married couple, claimed that they had been categorised as "experienced investors" when in fact they were not.

During testimony, the complainants claimed that they had some money in their savings account and wished to invest. They had other investments of relatively small amounts.

In the Experienced Investor Declaration Form which they were required to sign, they signed under the third criterion, that is, in the preceding five years, they had transacted investments of an amount which was not less than USD50,000 (or equivalent). In terms of the eligibility criteria, in the case of a joint investment, each of the spouses had to meet such criteria separately. The bank provided a list of investments held by one of the spouses and it was evident that, although there were some investments, these had not been made within the preceding five years of the investment in the fund as the criteria required.

On the basis of the evidence provided, not only was the party of whom investments were provided in evidence ineligible to invest, but that no evidence was provided by the bank as to whether the other party met the eligibility criteria. Not only was there no evidence provided to sustain the argument relating to eligibility but that the investors' profile was certainly unrelated to financial investments and they could not be considered as having the expertise and knowledge to make their own investment decision and understand the risks involved.

The complaint was upheld.

Investment done on reaching retirement age

Complaint upheld

The investor was about to retire and had a number of fixed deposit accounts which had matured. She wanted to invest in a secure investment and was not seeking any high interest but rather an investment that would render her a stable and secure profit. When she visited the branch, she was told about the Fund. She asked several questions as to the Fund's security and the bank had reassured her that the value of property is always on the increase and never falls.

The investor said she was hesitant at first as she knew little about the investment. When she told the bank officials that she wanted to place her money in a fixed deposit account, they dissuaded her from doing so stating that she would have committed a mistake had she not invested in the Fund.

She proceeded with investing on the basis of the bank official's assurances.

During testimony, she claimed that at regular intervals, she used to be contacted by bank officials and she used to be told that the property fund was the best investment.

The investor ended up investing three times in the same fund. According to the documentation, the first two

investments were on an 'execution only' basis. However, during her testimony, the Arbiter expressed deep reservations that the transactions had actually been carried out without advice from the bank.

For each of the three transactions, the investor had confirmed that she was eligible to invest by virtue of the third criterion.

According to the documentation and evidence provided, prior to the first transaction in the fund, the investor did not meet the eligibility criteria. As to the second and third transactions, if one were to exclude the previous transaction in the fund, the investor would also not have met the eligibility criteria.

As to the manner the fund had been offered to the investor, the Arbiter observed that the transactions were definitely not carried out by the investor on her own initiative because she had been continually contacted by bank officials urging her to invest in the fund.

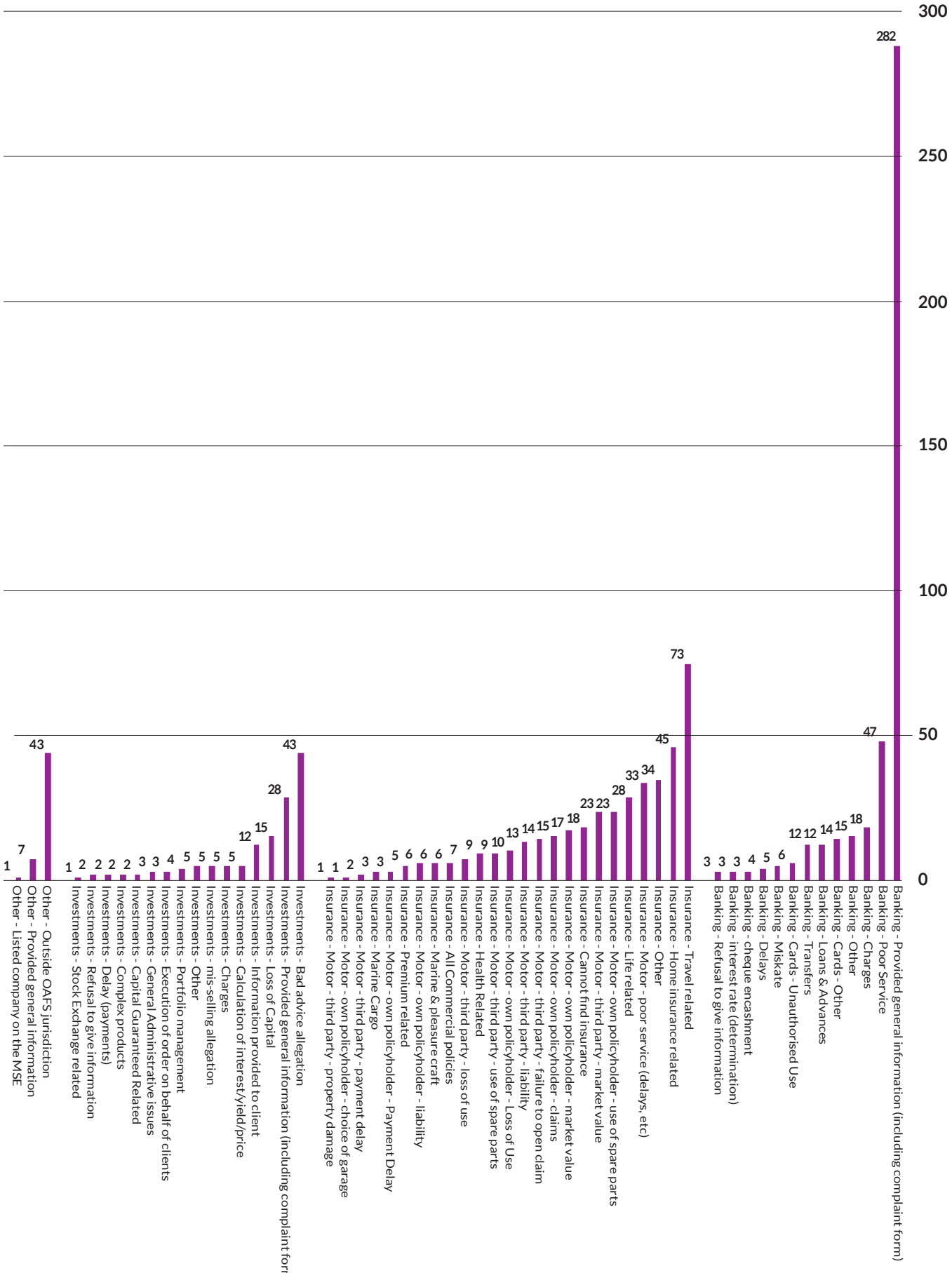
The Arbiter concluded that on the basis that the investor had been contacted several times by bank officials and that the documentation showed that the transactions had been carried out on 'execution only' basis – when it was evident that she had invested in the fund on the basis of advice given by the bank – the investor could not be considered to have had the expertise, experience and knowledge to analyse the risks related to the fund as defined in the definition of 'experienced investor'. The provider was incorrect that it considered the service as execution only.

The Arbiter also said that the investor did not acquire such qualities when she invested the second and the third time, apart from the fact that she ought not to have been offered the investment in the first place as she clearly did not meet the eligibility criteria.

The complaint was upheld.

Appendix 1

Enquiries and minor cases received in 2018 (by type)



Appendix 2

Complaints received in 2018 (by provider)

Alphabetical list of financial services providers against whom complaints were lodged with the OAFS during 2018.

Name of financial services provider	Complaints received
All Invest Company Limited	8
All Invest Company Limited / Zenith Finance Limited[1]	1
Apex Funds Limited	1
Atlas Insurance PCC Limited	2
Bank of Valletta plc	21
Bank of Valletta plc / BOV Asset Management Limited[2]	2
Binary Investments (Europe) Ltd	1
Blevins Franks Financial Management Limited	1
BNF Bank plc	1
Bonnici Insurance Agency Limited	1
Building Block Insurance PCC Limited	2
Calamatta Cuschieri Investment Services Ltd	3
Crystal Finance Investments Limited	18
Curmi and Partners Limited	1
Eagle Star (Malta) Limited	1
FXDD Malta Limited	1
GasanMamo Insurance Limited	1
GlobalCapital Financial Management Limited	3
GlobalCapital Life Insurance limited	2
Grosvenor Square Portfolio SICAV plc	1
Harbour Pensions Limited	1
Hogg Capital Investments Ltd (Tier 1 FX)	1
Hollingsworth International Financial Services Limited	1
HSBC Bank Malta plc	6
Laferla Insurance Agency Limited	1
Mapfre MSV Life plc	8
MeDirect Bank (Malta) plc	2
MIB Insurance Agency Limited	1
Michael Grech Financial Investment Services Limited	1
Momentum Pensions Malta Limited	55
Northway Financial Corporation Limited	29
Satabank plc	1
Sovereign Pensions Limited	1
STM Malta Trust and Company Management Limited	6
TMS Brokers Europe Limited	1
XNT Limited	1
Zenith Finance Limited[1]	4
	192

[1] Formerly *MFSP Financial Management Limited*

[2] Formerly *Valletta Fund Management Limited*

Appendix 3

Decisions of the Arbiter delivered in 2018 – Breakdown by financial services provider

The table below reflects the state of play of decisions delivered in 2018. Appealed cases might have been decided or ceded following publication of this report. Updated information relating to appealed cases is available from ecourts.gov.mt.

Name	Type of complaint	Complaint upheld	Partially upheld	Complaint rejected	Appealed	Not appealed
All Invest Company Limited	Investments	30				30
Atlas Healthcare Insurance Agency Limited	Insurance			1		1
Atlas Insurance PCC	Insurance			1		1
Bank of Valletta plc	Banking			3		3
Bank of Valletta plc	Investments	33		6	34	5
Bank of Valletta plc	Insurance			1		1
Bank of Valletta plc & BOV Asset Management Limited[1]	Investments	18			18	
Calamatta Cuschieri Investment Services Limited	Investments			1		0
Corporate & Commercial FX Services Limited	Banking			1		1
Crystal Finance Investments Limited	Investments	5	1	3	6	3
GlobalCapital Financial Management Limited	Investments	7			7	
Hollingsworth International Financial Services Limited	Investments			1	1	
HSBC Bank Malta plc	Investments			1	1	
HSBC Life Assurance (Malta) Limited	Insurance	1				1
Mapfre Middlesea plc	Insurance	2		1		3
Mapfre MSV Life plc	Insurance		2		1	1
Northway Financial Corporation Limited	Banking			1		1
Zenith Finance Limited[2]	Investments	4		1	1	4
		100	**3**	**22**	**69**	**56**

[1] Formerly *Valletta Fund Management Limited*

[2] Formerly *MFSP Financial Management Limited*

Office of the Arbiter for Financial Services

Audited financial statements as at
31 December 2018

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Report of the Auditor General

To the Office of the Arbiter for Financial Services

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Arbiter for Financial Services set out on pages 1 to 9, which comprise the statement of financial position as at 31 December 2018, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

The Office of the Arbiter for Financial Services' responsibility for the financial statements

The Office of the Arbiter for Financial Services is responsible for the preparation of financial statements that give a true and fair view in accordance with International Financial Reporting Standards as adopted by the European Union, and for such internal control deemed necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal controls relevant to the preparation of financial statements of the Office, in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office of the Arbiter for Financial Services, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Arbiter for Financial Services as at 31 December 2018, and of its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with Act XVI of 2016 and 2017 of the Laws of Malta.

Auditor General
10 June 2019

BOARD OF MANAGEMENT AND ADMINISTRATION REPORT

Board of Management and Administration submit their annual report and the financial statements for the period ended 31st December 2018.

Objects

The Office of the Arbiter for Financial Services is an autonomous and independent body setup in terms of Act XVI of 2016 of the Laws of Malta. It has the power to mediate, investigate and adjudicate complaints filed by customers against financial services providers.

Results

The statement of comprehensive income is set out on page 3.

Review of the period

The Board reports a deficit of €8,747 during the period under review.

Post Statement of Financial Position Events

There were no particular important events affecting the entity which occurred since the end of the accounting year.

Statement of the Board of Management and Administration responsibilities

In terms of the licensing regulations applicable to Goverment entities, the entity is to prepare financial statements for each financial period which give a true and fair view of the financial position of the Entity as at the end of the financial period and of the surplus or deficit for that period.

In preparing the financial statements, the entity is required to: -

- adopt the going concern basis unless it is inappropriate to presume that the Entity will continue to function;
- select suitable accounting policies and apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- account for income and charges relating to the accounting period on the accrual basis; and
- prepare the financial statements in accordance with International Financial Reporting Standards as adopted by the European Union.

Statement of financial position

	Notes	2018	May 2016 to Dec 2017
		€	€
ASSETS			
Non-current assets	7	**21,519**	**26,457**
Current assets			
Trade and other receivables	8	**2,033**	**1,711**
Cash and cash equivalents	9	**49,240**	**53,697**
		51,273	**55,408**
Total assets		**72,792**	**81,865**
EQUITY AND LIABILITIES			
Equity			
Accumulated Funds		**63,476**	**72,223**
		63,476	**72,223**
Current liabilities			
Trade and other payables	10	**9,316**	**9,642**
		9,316	**9,642**
Total liabilities		**9,316**	**9,642**
TOTAL EQUITY AND LIABILITIES		**72,792**	**81,865**

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

The financial statements have been authorised for issue by the Board of Management and Administration and signed on its behalf by:

Mr Geoffrey Bezzina
Chairperson

Date: 6 June 2019

Statement of comprehensive income

	Notes	2018	May 2016 to Dec 2017
		€	€
Income	3	**503,065**	**737,083**
Administrative expenses	4	**(511,725)**	**(664,710)**
Financial costs	5	**(87)**	**(150)**
Surplus/(Deficit) for the year/period		**(8,747)**	**72,223**

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Statement of changes in equity

	Accumulated fund	Total
	€	€
Balance at 1 May 2016	-	-
Surplus for the period	72,223	72,223
Balance at 31 December 2017	**72,223**	**72,223**
(Loss) for the year	(8,747)	(8,747)
Balance at 31 December 2018	63,476	63,476

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Statement of cash flows	Note	2018	May 2016 to Dec 2017
		€	€
Operating activities			
Surplus/(Deficit) for the year/period		(8,747)	72,223
Adjustments to reconcile profit/(loss) before tax to net cash flows:			
Non-cash movements			
Depreciation of fixed assets		6,610	10,196
Working capital adjustments			
Increase in trade and other receivables		(322)	(1,711)
Increase in trade and other payables		(326)	9,642
Net cash generated from operating activities		(2,785)	90,350
Investing activities			
Purchase of property, plant and equipment		(1,672)	(36,653)
Net cash used in investing activities		(1,672)	(36,653)
Cash and cash equivalents at 1 May 2016		53,697	-
Net increase/(decrease) in cash and cash equivalents		(4,457)	53,697
Cash and cash equivalents at 31 December	9	49,240	53,697

The accounting policies and explanatory notes on pages 6 to 9 are an integral part of these financial statements.

Notes to the financial statements

1. Corporate information

The financial statements of the Office for the Arbiter for Financial Services for the year ended 31 December 2018 were authorised for issue in accordance with a resolution of the members. Office of the Arbiter for Financial Services is a Goverment entity.

2.1 Basis of preparation

The financial statements have been prepared on a historical cost basis. The financial statements are presented in euro (€).

Statement of compliance

The financial statements of Office for the Arbiter for Financial Services have been prepared in accordance with International Financial Reporting Standards as adopted by the European Union.

2.2 Summary of significant accounting policies

The accounting policies set out below have been applied consistently to all periods presented in these financial statements.

Property, plant and equipment

Property, plant and equipment is stated at cost less accumulated depreciation and accumulated impairment losses. Such cost includes the cost of replacing part of the plant and equipment when that cost is incurred if the recognition criteria are met. Likewise, when a major inspection is performed, its cost is recognised in the carrying amount of the plant and equipment as a replacement if the recognition criteria are satisfied. All other repair and maintenance costs are recognised in profit or loss as incurred.

Depreciation is calculated on a straight line basis over the useful life of the asset as follows:

Fixtures, furniture & fittings	10 years
Computer equipment	4 years
Office equipment	4 years

Depreciation is to be taken in the year of purchase whereas no depreciation will be charged in the year of disposal of the asset.

Notes to the financial statements (continued)

Summary of significant accounting policies (continued)

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected from its use or disposal. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the asset) is included in profit or loss in the year the asset is derecognised. The asset's residual values, useful lives and methods of depreciation are reviewed and adjusted if appropriate at each financial year end.

Cash and cash equivalents

Cash and cash equivalents in the balance sheet comprise cash at bank and in hand and short term deposits with an original maturity of three months or less. For the purposes of the cash flow statements, cash and cash equivalents consist of cash and cash equivalents as defined, net of outstanding bank overdrafts.

Trade and other payables

Trade and other payables are shown in these financial statements at cost less any impairment values. Amounts payable in excess of twelve months are disclosed as non current liabilities.

3. Income

Income represents Goverment funding and complaint fees.

	2018	May 2016 to Dec 2017
	€	€
Government Funding	500,000	720,014
Complaint Fee's	3,065	17,069
Total Income	503,065	737,083

4. Expenses by nature

	2018	May 2016 to Dec 2017
	€	€
Staff Salaries	430,023	545,840
Office maintenance & Cleaning	14,005	20,142
Car & Fuel Expenses	19,911	23,655
Advertising (Recruitment costs)	734	7,167
Telecommunications	5,124	8,602
Professional Fees	2,699	3,698
Depreciation charge for the year	6,610	10,196
Other expenses	32,619	45,410
Total administrative costs	511,725	664,710

Notes to the financial statements (continued)

4. Expenses by nature (continued)

Average number of persons employed by the office during the year/period:	2018	May 2016 to Dec 2017
Total average number of employees	**14**	**10**

5. Financial costs

	2018	May 2016 to Dec 2017
	€	€
Bank and similar charges	**87**	**150**

6. Taxation

Being a Government entity, no tax is liable on the surplus earned during the year as per the Income Tax Act.

7. Property, plant and equipment

	Furniture, Fixtures & Fittings	Office Equipment	Computer Equipment	Total
	€	€	€	€
Net book amount at 1 May 2016	-	-	-	-
Additions	19,213	4,314	13,126	36,653
Depreciation charge for the period	(3,411)	(1,079)	(5,706)	(10,196)
Net book amount at 31 December 2017	**15,802**	3,235	**7,420**	**26,457**
Additions	590	230	852	1,672
Depreciation charge for the year	(1,980)	(1,136)	(3,494)	(6,610)
Net book amount at 31 December 2018	**14,412**	2,329	**4,778**	**21,519**
As at 31 December 2018				
Total cost	19,803	4,544	13,978	38,325
Accumulated depreciation	(5,391)	(2,215)	(9,200)	(16,806)
Net book amount at 31 December 2018	**14,412**	2,329	**4,778**	**21,519**

Notes to the financial statements (continued)

8. Trade and other receivables	2018	May 2016 to Dec 2017
	€	€
Prepayments	2,033	1,711

9. Cash and cash equivalents

For the purpose of the cash flow statement, cash and cash equivalents comprise the following:

	2018	May 2016 to Dec 2017
	€	€
Cash at bank and in hand	49,240	53,697

10. Trade and other payables	2018	May 2016 to Dec 2017
	€	€
Trade payables	159	848
Accruals	9,157	8,794
	9,316	9,642

Administrative expenses	2018	May 2016 to Dec 2017
	€	€
Staff Salaries	430,023	545,840
Office Consumables	1,178	1,221
Cleaning	8,044	10,433
Office Maintenance	5,961	9,709
Printing and Stationery	2,468	7,802
Letterheads and Other Stationery	-	3,832
PC/Printer Consumables	1,836	2,152
Other Office Costs	4,787	7,293
Other Office Equipment	120	595
Telecommunications	5,124	8,602
Website Expenses	276	410
Postage, Delivery & Courier	3,326	4,853
Insurance - Health	8,780	5,807
Insurance - Life	-	62
Insurance - Travel	244	46
Insurance - Business	188	-
Memberships & Subscriptions	756	1,285
General Expenses	171	3,453
Vehicle, leasing and fuel expenses	19,911	23,655
Travelling Expenses	4,639	2,596
Advertising (Recruitment)	734	7,167
Meals & Entertainment	-	949
Professional Fees	2,699	3,698
Payroll Fees	483	454
Accounting Fees	3,367	2,600
Depreciation Charge	6,610	10,196
	511,725	664,710

ARBITER FOR FINANCIAL SERVICES

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